

No. 11704

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellee.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
IN THREE VOLUMES
VOLUME II
Pages 385 to 780

Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Southern Division

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Southern Division

(Testimony of B. Salvini.)

Direct Examination

(Continued)

Q. Mr. Salvini, does the land between the power plant and the head of the canal have any value beside value for right of way purposes? That is, the property owned by the District?

A. It would be a little that could be farmed, outside of the right of way of the canal.

Q. A little that could be farmed? About how much?

A. Oh, just probably might be around eighty acres, more or less.

Q. And do you know what type of soil it is?

A. Yes.

Q. State what kind it is.

A. It is good sandy loam, a good deep soil.

Q. Has any of it been farmed or levelled?

A. Well, there was a part of that that was farmed once.

Q. About how much of it?

A. I think it was around fifty acres or better.

Mr. Ramsey: I didn't get the answer.

A. Around fifty acres.

Q. How could it be irrigated?

A. Well, this land here, it could be irrigated from the same ditch that irrigates the other ranch up there at Priest Rapids, the same canal that serves this ranch could serve the Irrigation District land over north of that ranch, by just add the canal, extending over to the west side of the

land and irrigating east, down toward the river.

Q. And how was that land irrigated? [334]

A. Well, they used to get the water from the Priest Rapids plant, we got the pump up there especially for that ranch, and for the other irrigable land that is up there west of the power plant.

Q. Who owns the pump and motor?

A. The Priest Rapids Irrigation District owns the pump and motor.

Q. Where is the pump and motor located?

A. Well, they are located down in the second floor, not the floor that you go into the plant, but down the floor below, on the south side, up there in the corner, on the southwest corner of the plant, and the intake of the pipe, it is right inside of the canal, and there is a pipe in there. You can notice that pipe when you walk over that bridge to go into the power house, well, you can notice the pipe is down in the weeds, and is tied up on a stilt for a little ways to cross over the opening of the canal, then it goes into the canal and comes out up toward——

Q. Do you know how big a pump it is?

A. Well, I know the motor, what size it is.

Q. What was the motor?

A. That was fifty horsepower.

Q. How far would you have to take the water from that pump to irrigate this land? [335]

A. Well, the land, to irrigate all that land, it should go clear up at the head of the canal, but the present ditch that is up there, that they irrigate that fifty acres in the past, well, it just reach that

(Testimony of B. Salvini.)

much land. If they got to go up and irrigate the balance of that land they got to have another lift, a little higher. The other land is kind of a slope, and it is a little higher; water wouldn't go over it at the present time with the present facilities.

Q. Is it necessary to have this land in order to operate the power canal and power plant?

A. No.

Q. What, in your opinion, Mr. Salvini, was the fair market value of this land that you described as farm land, on October 1, 1943?

Mr. Ramsey: Just a minute, now, Mr. Salvini. If the Court please, I would like to dictate a general objection at this time, perhaps in the absence of the jury. It will be a little bit lengthy.

The Court: Yes. All right, the jury may retire.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Ramsey: If the Court please, the petitioner, United States of America, objects to the introduction and reception of any and all testimony as to the value or cost [336] of any of the facilities and properties of the Priest Rapids Irrigation District acquired by the petitioner through the filing of declaration of taking 99 upon the grounds that such testimony is wholly irrelevant, incompetent and immaterial. The records and files of civil number 128 establish that at the time of the filing of declaration of taking number 99 the petitioner

(Testimony of B. Salvini.)

United States of America had, through direct purchase and filing of declarations of taking, become the fee owner of all lands within the boundaries of the Priest Rapids Irrigation District. Through the acquisition of the land the United States had become the equitable owner of all of the properties of the District of whatsoever nature or kind.

At the time declaration of taking 99 was filed the District, under the rule laid down in *In Re Horse Heaven*, held only the naked legal title to those properties in trust for the land owner, the land owner and the sole owner being the United States of America. It follows, therefore, that all that was taken from the District under declaration of taking 99 was the naked legal title to the properties covered by said declaration of taking not coupled with any beneficial interest. The market value of the naked legal title held only for the use and benefit of the land owner, the United States of America, could be nothing more than a nominal value, and this rule, established [337] in the case of *In Re Horse Heaven* by the Supreme Court of the State of Washington, makes no distinction between the irrigation and non-irrigation assets. "Because, as owner of the lands in the irrigation district, the owner immediately acquires an interest in all property of the district." As the Court knows, in the *Horse Heaven* case all of the assets and all of the properties of the district were non-irrigation properties, under the formula here being dealt with.

(Testimony of B. Salvini.)

This proceeding is very plainly an attempt on the part of the trustee to litigate with the beneficiary of the trust the question of the value of the trust property. The actual value of the trust property is of no importance in this proceeding since the beneficial use of the properties was already vested in the United States of America at the time of the filing of declaration of taking number 99, and the only thing taken by said declaration of taking was the naked legal title to said properties held in trust solely for the use and benefit of the condemnor, the United States of America.

The District is entitled to be compensated only for that taken under declaration of taking 99. If there is to be an inquiry as to the value of the interest taken, the inquiry must be limited to the fair market value of that taken, which was the naked legal title, not coupled [338] with any beneficial interest whatever. The inquiry cannot embrace in addition the beneficial use of the properties, because that use was already acquired and paid for by the government through the acquisition of all the lands within the district. The question for determination is not the value of the properties covered by the declaration of taking, but the fair market value of the naked legal title thereto. Now this, and this only, the government acquired under declaration of taking number 99, the naked legal title, not coupled with any beneficial interest whatever, and this, and this only, the government can be required to pay for in this proceeding; and if

(Testimony of B. Salvini.)

that is the case, if the government can be required to pay only for that which was taken under the declaration of taking, then the inquiry is not as to the market value or the cost of the properties, but as to what an informed buyer would pay for the naked legal title, not coupled with any beneficial use whatever, and I submit to the Court that it can only be a nominal sum.

Mr. Cheadle: Your Honor, for the defendants, we are assuming that government counsel has made his objection here, and perhaps his supporting argument, primarily for the record, in view of the rulings announced by your Honor in chambers. If we are correct, that the ruling announced by your Honor in chambers this morning is the one which the Court proposes to follow throughout the trial, we do not wish to be heard in response to the argument just made by Mr. Ramsey.

The Court: Yes, I assumed that counsel is making his record here. The court has already ruled on this particular question in passing on demurrers to the amended answers, and announced in chambers I was still of the same view this morning, and the objection will be overruled.

Mr. Cheadle: We will request likewise, for the purposes of the record, to preparing and adding and have written into the record the grounds of our exceptions to what I may call the adoption of the "Schwellenbach formula" and this might be an appropriate place to have that inserted in the record, and we will be able to furnish that to the reporter tomorrow.

(Testimony of B. Salvini.)

The Court: Yes, I think copies should be furnished to counsel so he will know what your objections are, and he may take any action he sees fit with reference to it. In other words, he should be informed at the time you put it into the record what it is. I think both sides should make their record for the purpose of appeal.

Defendant's Exception

(Inserted at this place in the record as directed by counsel and the Court.)

The defendant Priest Rapids Irrigation District notes [340] exception to the Court's rulings that compensation will not be allowed for the district's so-called irrigation properties and will be allowed only for the district's so-called non-irrigation properties; that part of the value of the district's power properties will be allocated to and included with the district's so-called irrigation properties and no compensation allowed for said part; that the value of the so-called irrigation properties shall be determined by the jury for limited purposes such as aiding in disposition of the questions arising from payment of the district's bonds with money deposited in the registry of the Court at the time of filing of the declaration of taking, to the exclusion of an award for said irrigation properties; and that the trial before the jury will be conducted accordingly. Said ruling having been announced by the Court in chambers, a procedure

(Testimony of B. Salvini.)

agreeable to counsel for both the petitioner and the defendant district, the appropriate occasion for making this exception a matter of record is in connection with the petitioner's objection and the Court's ruling, just made, since they involve the conflicting legal positions of the petitioner and defendant district and the Court's rulings thereon announced in chambers.

This exception by the defendant district is based on the following grounds: [341]

1. The Court's rulings deny to defendant district the constitutional protection of the fifth amendment to the Constitution of the United States of America: "nor shall private property be taken for public use, without just compensation;"

2. The Acts of Congress under the authority of which the Government instituted this condemnation proceeding, and which Acts of Congress are recited in the original and amended petition in Civil No. 128 and in the amended petition and declaration of taking in Civil No. 128-99, require that there be determination of just compensation for the district's properties which in this condemnation proceeding the Government has taken in the exercise of its power of eminent domain;

3. That proceedings under the Declaration of Taking Act (40 U.S.C. 258a) and its provisions for deposits paid into the registry of the Court and for vesting of title in the Government are merely ancillary to the main condemnation proceeding, and cannot be used as a device for avoiding the basic

(Testimony of B. Salvini.)

constitutional and statutory requirement that in this condemnation proceeding there be a judicial determination and award of just compensation for the district's property—a use which the Government has attempted in Civil No. 128 and which the Court's rulings partially allow; [342]

4. The pleadings and record in Civil No. 128 show that in the previous proceedings in No. 128 there has not been any determination or award of just compensation for the defendant district's properties;

5. The "acquisition policy" of the War Department and the Government's contention in support thereof, which the Court's rulings uphold in part, cannot properly be construed as more than a claim to part or all of the compensation award for the district's properties, which claim should be considered, if at all, after determination of the amount of the award and not as a device for evading determination and award of compensation; and

6. The "acquisition policy" of the War Departments and the Government's contention are based on the Government's construction of state statutes and decisions which are not applicable to the situation of the defendant district, or which at least have never been held applicable, and which this Court's rulings of June 1, 1946, and February 11, 1947, properly leave for State Court determination, as to the district's non-irrigation properties, but as to irrigation properties—erroneously

(Testimony of B. Salvini.)

decide in the Government's favor "on the basis of preliminary guesses regarding local law."

The defendant district requests that this exception not be deemed waived or jeopardized in any way during the [343] course of the trial by reason of interrogation of witnesses or introduction of evidence in a manner that is in accordance with the court's rulings to which this exception is taken.

* * *

Mr. Ramsey: The Court has overruled the objection?

The Court: Yes.

Mr. Ramsey: The further objection is urged that this witness has not been qualified to testify as to the value of these lands; second, that the lands are a portion of the power set-up and as such should not be valued separately and apart from the power properties themselves. The further objection is urged that to permit the witnesses to testify as to the value of each and every item of these properties, based upon a hypothetical use and development, inevitably leads to an addition of all the various items by the jury.

The Court: As I understand this testimony of this witness, there is evidence here now that there is eighty acres of this land through which the canal runs that is susceptible to use for farm land. In other words, its highest possible use would be farm land. I think that may be shown. However, I am extremely doubtful that this witness has been quali-

(Testimony of B. Salvini.)

fied as an expert on farm land values. He's been director of the district for a number [344] of years.

Mr. Powell: Perhaps I was erroneous in assuming that the ownership rule applied to corporation, a municipal corporation, this man being chairman of the board. I might state also, about segregating the values, I assumed this was what we would be required to do in view of the court's indicated ruling on the "Schwellenbach formula."

The Court: I think it is counsel's assertion this is part of the power plant, not a farm. Frankly, I don't know whether this rule applies to corporations or not. An individual owner may testify as to the value of his property. Whether or not that would apply to the director of an irrigation district, I don't know. Have you any authorities?

Mr. Powell: No, I haven't; I'm sorry.

Mr. Ramsey: I never heard of it, your Honor. It might lead to a peculiar situation. If you can qualify one you can qualify all. That might result in them following one another on the stand, each giving his opinion.

Mr. Powell: We only have one chairman, though, your Honor.

The Court: That is an exception to the rule that only an expert can testify as to values. The owner being closely acquainted with his own property, I think there is a personal element that isn't present here. I will have to rule, unless counsel can show me authority to the contrary, that it does not apply to a municipal corporation. Perhaps

(Testimony of B. Salvini.)

we had better bring the jury in, then. I might say I don't think the Court has definitely ruled on this last part of it. As the testimony stands, the objection is sustained.

Mr. Powell: I would like to qualify him further.

The Court: Yes, all right, I will reserve my ruling until you do ask further questions.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

Direct Examination

(Continued)

By Mr. Powell.

Q. Mr. Salvini, have you bought or sold any farm land in the Hanford Irrigation District, in the Priest Rapids Irrigation District?

A. Yes.

Q. How many different farms have you owned?

A. Oh, four or five.

Q. Four or five? A. Five.

Q. Did the Priest Rapids Irrigation District sell any property? A. Yes.

Q. And was it sold—I mean, did the directors take any part in those sales? [346]

A. Yes.

Q. Were you, or were you not, familiar with the sales and the terms of the sales of farm property in or near the Priest Rapids Irrigation District in 1943? A. Yes.

(Testimony of B. Salvini.)

Q. And do you know or were you familiar with sales of property that were comparable to the property that you've described, between the power plant and the head of the canal? A. Yes.

Q. Have you ever appraised real property?

A. Yes.

Q. And have you testified as a value witness in other cases arising in the Hanford Engineer Works area? A. Yes.

Q. In this Court?

A. I know at Walla Walla; I think in this Court too.

Q. Well, it was the Federal Court, wasn't it?

A. Federal Court at Walla Walla, and up here.

Q. And then up here? A. Uh huh.

Q. Did you testify in the Todd case?

A. Who?

Q. Todd? [347] A. Yes.

Q. And in the Baker case? A. Yes.

Q. Involving the property farmed by Joe Derigio? A. Yes.

Q. As part of your duties as a member of the Board of Directors of the Irrigation District, was it necessary or did you do anything about determining the market value of the property owned by the District?

A. Well, the Board of Directors, well, they decide what price they will have to sell the District land.

Q. What price they would have to sell the District land for? A. Yes.

(Testimony of B. Salvini.)

Q. Is there any farm property that is near the Priest Rapids Power plant? A. Yes.

Q. Were there any sales of that property?

A. There was a sale a few years before, just changed hands.

Q. Which property was that?

A. The Dam Brothers Ranch.

Q. Pardon?

A. The Dam Brothers; I think it was sold to the Priest Rapids or some development company, eastern outfit, that same ranch that is up there west of the power house.

Q. That is the Brown Brothers Ranch? [348]

A. Uh huh.

Q. Were you familiar with that sale?

A. No, I am not with the dates; I just heard the price.

Q. Do you know the Brown Brothers?

A. Yes.

Q. Do you know whether or not the information you received about that sale is accurate?

A. That's where I received the information.

Q. From whom?

A. From the Brown Brothers.

Q. Did they buy, or sell?

A. No, they were just leasing.

Q. They were leasing, but the property was sold during the time they were leasing?

A. Yes.

Q. How far is that from the property of the Priest Rapids Irrigation District you have been describing? A. First adjoining.

(Testimony of B. Salvini.)

Q. Just adjoining? A. Adjoining.

Q. From your information, Mr. Salvini, have you formed an opinion as to the fair market value of the farm land of the Priest Rapids Irrigation District, that is, lands that could be farmed, between the power plant and the head of the canal?

A. Yes.

Q. And how many acres, again, were there?

A. Say it again.

Q. How many acres were there, approximately?

A. Well, I never knew if it was—it was around eighty acres or so, probably a hundred.

Q. Between eighty and one hundred acres, is that right? A. Around eighty acres.

Q. What, in your opinion, was the fair market value of that property on October 1, 1943?

Mr. Ramsey: Now just a moment. I would like to inquire further of the witness, two or three questions, before I object or——

The Court: As to his qualifications?

Mr. Ramsey: Yes.

The Court: All right.

Voir Dire Examination

By Mr. Ramsey:

Q. Mr. Salvini, what was the total acreage of the land owned by the Irrigation District between the power house and the intake of the canal?

A. Well, if I add up the acreage on the map, but I know the lines that the Irrigation District owned, starting from down below those residences,

(Testimony of B. Salvini.)

and you go up along the fence of that ranch, and you follow that ranch up north until it turns west, and that fence is just the line of the land of [350] that ranch. The balance outside of that, it is owned by the Irrigation District, except up at the upper end is a jump up there off——

The Court: I wonder if the witness understood the question. Didn't you ask what the acres was?

Q. Yes. Do you know how many acres was owned by the Priest Rapids Irrigation District between the power house and the intake of the canal? A. I don't.

Q. Do you know how many acres were taken up of the land that was owned by the District by the right of way for the canal itself?

A. No, I don't.

Q. Now, was any portion of that canal dug, or was it all natural?

A. There was all natural, the canal; the new portion of the canal that we dug, it wouldn't touch this farm land, because it's all on the opposite side of this farm land.

Q. Well, the channel end of the canal is a natural channel? A. Yes.

Q. There was no excavating done?

A. Well, there was some excavating done, oh, probably two or three acres at the head of the canal that we used the dirt to make the dam for the water.

Q. Now, did you ever go over these lands carefully, Mr. [351] Salvini, for the purpose of de-

(Testimony of B. Salvini.)

termining what portions of them were rocky and what portions of them were, that is, the exact acreage or amount of acreage that was rocky, and the amount of acreage that was clear soil, and the amount of acreage that would require leveling, that sort of thing?

A. I look at that land several times when we was up there in company with the other Board, and I am pretty well familiar with what kind of soil is up there, and what is rocky and what is not.

Q. That isn't the question. Did you go over the entire area for the purpose of classifying and determining how much of the acreage was rocky and unfit for cultivation, and how much of the acreage was clear soil and quite fit for cultivation?

A. I didn't make that just specifically right, but we went over the land to see whether it was good for farming or not.

Q. Well, it isn't all good for farming, is it, Mr. Salvini?

A. No.

Q. What percentage of it do you think was?

A. Well, as you get out the passing line of the ranch there's a stretch up there that's quite rocky, but after you get up to the dam, up above that up there she's all good farm land. [352]

Q. You mean above the intake of the canal?

A. No, not above the intake of the canal; it's down south of the intake.

Q. Yes; how far south?

A. Just the starting up there, take everything that's down below the railroad track.

(Testimony of B. Salvini.)

Q. Well, what I'm trying to get at is this, Mr. Salvini. You don't know how many acres you own up there; you didn't check over what you did own to find out how many acres was good land that could be cultivated and you didn't check how many acres was rocky and could not be cultivated, did you?

A. We didn't make a check by the acres, no.

Q. So at this time you don't know, from your examination, anything other than just a guess as to what acreage might be cultivated?

A. Well, it's more than what a guess.

Q. More than a guess?

A. Of good farm land.

Q. You mean more acreage was good farm lands than you guessed was good farm lands?

A. Yes.

Q. Well, it was a poor guess, then. I don't think I follow you. Do you mean that when you guessed that there was maybe eighty acres of good farm land, that you now think [353] there is more than that, is that what you mean?

A. Well, I know that there's eighty acres.

Q. Well, how do you know?

A. One thing is we used to, one time those Brown Brothers they used to rent forty acres, they was farming forty acres; they had it up there, easy to irrigate, then next to that, if there was a ditch to go over, well, there's another piece I know is just as big as that one, so I just figured that those two pieces together would make the eighty acres, even if there's nothing more.

(Testimony of B. Salvini.)

Mr. Ramsey: No objection to the witness answering the question.

The Court: All right. Will you read the question?

Mr. Powell: I don't think I had finished it. May I ask it again?

The Court: Well, you may if you wish. You had asked what the value was.

Mr. Powell: Well, I don't think I had finished.

Direct Examination

(Continued)

By Mr. Powell:

Q. What, in your opinion, Mr. Salvini, was the fair market value of that farm property that you have just described, that is, the value, the amount in cash, which a buyer, ready, able and willing to buy, but not required to buy, would pay to a seller ready, able and willing to sell, but not required to sell, both being fully informed, on [354] October 1, 1943?

A. At forty dollars an acre.

Q. How many acres?

A. Forty dollars an acre.

Q. For how many acres?

A. For eighty acres.

Q. \$3200.00, is that right? A. Yes.

Q. Now, did you—were you with the District when some changes were made in the turbines for generator number 2, were you on the Board then?

A. No, I don't was at that time.

(Testimony of B. Salvini.)

Q. You don't recall having anything to do with the change of the turbines?

A. I never had anything to do with the turbines.

Q. Did you have anything to do with a generator? A. Yes.

Q. When? A. 1940 or '41.

Q. What happened to the generator?

A. Well, the old generator, we didn't know what fault it was, it just run off or burned out, so we had to put in a new one.

Q. The old generator broke and had to be replaced, is that it? [355]

A. Yes, sir; yes.

Q. And what kind of a generator was the old one?

A. The old one was an Allis Chalmers.

Q. And that was replaced by——

A. General Electric.

Q. And that you say was done in 1940 or '41?

A. '41.

Q. Now, Mr. Salvini, did you or did the Board of Directors at any time enter into negotiations for the sale of the power plant?

A. We had some informal talk.

Q. You had some informal talk?

A. Yes.

Q. With whom?

Mr. Ramsey: That's objected to, if the Court please. I certainly object to going into any in-

(Testimony of B. Salvini.)

formal conversations or talk they may have had respecting the sale of the power plant. In the first place I raise the question of the right of the Priest Rapids Irrigation District to sell the power plant. If the ruling of the Supreme Court of this State in the case of Blakely vs. Priest Rapids Irrigation District has any force and effect at all, it is to the effect that a perpetual trust is imposed upon that power plant, and could not be sold without it, so I raise first the legal right of the [356] District to sell, if they were discussing sale, and I raise further the right of counsel to go into an informal conversation. That's no determination of value.

The Court: Well, of course, it is hard to tell at this stage of the proceedings just what counsel proposes to prove. It is near adjournment time. I'll excuse the jury. You may go now, and come back at ten o'clock tomorrow morning. Remember what I have said about not discussing the case among yourselves or with anyone else during the adjournment or any other recess or adjournment period, and the bailiff will take up your pads.

(Whereupon the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Powell: May I ask first if Mr. Yeager may be permanently excused?

Mr. Ramsey: No objection.

The Court: He may be excused, then, and Mr. Salvini may step down too. I just wanted to ask

after the jury went out what the purpose of this testimony is, and what you propose to prove along this line of inquiry.

Mr. Powell: It may be, it no doubt is, subject to the objection if we ask any price, your Honor please, and perhaps it is evidence that ought to be introduced in the absence of the jury, to the effect that the Irrigation [357] District and three other agencies had discussed the purchase from the District of this power plant, and the District had seriously considered the sale of the power plant as an independent item, as not being necessary for irrigation purposes, that is, under our theory of the case, convincing the court that the Schwellenbach formula as such would not apply to any part of the power plant; that the Irrigation District's purposes could be carried out without the power plant.

The Court: Well, you would have to buy power someplace else, I presume?

Mr. Powell: Correct.

The Court: I think if the formula is to be applied it would have to be applied to the situation as it existed in 1943, and the power plant then was an integral part of the irrigation system, and to a certain extent, its use was allocated and applied for pumping water for irrigation. It isn't your purpose to show the value of the power plant by showing what they proposed to sell it for?

Mr. Powell: No, your Honor. Perhaps we had better prepare an offer of proof on that, so that the record will be complete on it.

The Court: Yes, I should think that would be the logical thing to do. The Court will adjourn until ten o'clock tomorrow morning. [358]

(Whereupon, the Court took a recess in this cause until Wednesday, February 12, 1947, at 10 o'clock a.m.)

Yakima, Washington, February 12, 1947,
10:00 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: This trial is starting its third day today, and so far we have concluded with the testimony of only one witness. It seems obvious that we must move faster and with less motion or we won't finish this case and the companion case much before Easter time. I have some cases set for next week, the 19th and 20th, in which counsel, most of them, are from Seattle, and the parties and witnesses have to come from there, and it is important that I get through with this one in order that I can start that case on time if I can. I might suggest that where there are two counsel, you can line up your witnesses so that when one witness is through the next one will be ready. You can save some time that way, and I think it might move a little faster generally. Call in the jury. Let's see,

Mr. Salvini is on the witness stand. Come forward, Mr. Salvini, and take the witness stand here.

(Whereupon, the following proceedings [361] were had within the presence of the jury and one alternate juror.)

B. SALVINI

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Salvini, what kind of work did the Irrigation District do in maintaining the transmission line?

A. The transmission line, we was doing regular work by stubbing the poles or re-setting new poles as the necessity would require, and we had it just about complete. We stubbed practically ninety per cent of the poles, so the line was in number one shape.

Q. From the time the District started to operate the pumping plant did they have any trouble with it?

A. Repeat, please.

Q. From the time the District started to operate the pumping plant did they have any trouble with it?

A. No, no; I don't think that we ever shut the water off on account of the pump. I think there was continuous delivery of water.

(Testimony of B. Salvini.)

Q. Who was the secretary or manager or engineer for the District in 1943 and '42?

A. It was a Mr. Joe Grell.

Q. G-r-e-l-l? A. Yes. [362]

Q. What did he do?

A. Well, he was running the—he was the manager, and running the power plant, and supervising the pumping plant and on the transmission line, and at the same time he was secretary of the District.

Q. Did he have charge of the records of the District? A. Yes.

Q. Where is he now?

A. Well, he died in 1944, I think it's in the spring of 1944.

Q. He died in 1944? A. Yes.

Q. Do you have the records that he kept?

A. Yes.

Q. And does that record that you have include the record showing the amount of electric power used at Coyote Pumping Station? A. Yes.

Q. Is that the only record the District has of that use now? A. Yes.

Q. I hand you a file, Mr. Salvini, and ask you if you will recognize what that file is?

A. Those here include the monthly statement of the power plant at Priest Rapids, and you separated out whatever was used for the houses up there at Priest Rapids, and the plant, whatever was used at the Beverly line, and [363] whatever the pumping plant at Coyote was using, and what-

(Testimony of B. Salvini.)

ever was left of the balance, and percentage of losses that there was from Coyote Rapids down to the switch—from Priest Rapids down to the Coyote Rapids junction.

Q. Then from the information in this file are you able to determine how much of the power was used by the District at the Coyote Pumping Station?

A. Yes.

Q. And how much was commercial power?

A. Yes.

Mr. Powell: We would like to make a tabulation from this. We'll identify the file, your Honor, so the tabulation can be made later.

Mr. Ramsey: The government has no objection to a tabulation of the records so far as the amount of power used in the pumping operations is concerned, the amount diverted there. It appears, however, that Mr. Grell's records necessarily could only have been made up as to the items from information furnished from the power plant itself. Mr. Grell was in charge of the pumping plant. The prior testimony has been to the effect that the records were kept at the pumping plant itself as to the power generated.

The Court: As to the power used, you mean, at the pumping plant? [364]

Mr. Ramsey: Yes, Mr. Grell, I assume that his records as to that are predicated upon the amount diverted and there used, but as to the power generated, the power which may have been diverted to the Beverly line, of that plant, I don't think Mr. Grell's record could be the first record.

(Testimony of B. Salvini.)

The Court: I get your point. Would your compilation include only the power used at the pumping station, at Coyote Rapids?

Mr. Powell: No, we have prepared a tabulation of the last full year of District operation, which was 1943, which includes information from that file and information from the records Mr. Yeager identified yesterday as the power plant daily records of generation of power.

The Court: Well, if I get your position correctly, you will show the total amount of power generated at the power plant by records identified by Mr. Yeager yesterday. The compilation from this record will show the power used at the pumping plant.

Mr. Powell: That is correct.

Mr. Ramsey: As to that we have no objection.

The Court: That will be understood, then, that the compilation will be made in that way. I would like to ask a question here. There's been mention made of the Beverly line. Was all the power sold at wholesale conveyed over the Beverly line, [365] or does that go someplace else?

Mr. Powell: Someplace else. The Beverly line takes off just east of the power plant, goes across the river, and goes to Beverly. That is operated by the Pacific. The Pacific purchased that power, and also other power, which they received over the high tension line at Coyote Junction switching station.

(Testimony of B. Salvini.)

The Court: And then the wholesale power sold was diverted someplace else, somewhere between the power plant and the pumping station?

Mr. Powell: Correct.

The Court: Where was that?

Mr. Powell: At the Coyote Junction, about fourteen miles east of the power plant.

The Court: I might say to the jury what the court and counsel says is not part of the evidence. I am just trying to clarify it a little. It is just part of the opening statement. It isn't evidence, and you have to have evidence in order to consider it. You may go ahead.

Direct Examination

(Continued)

Q. Can you give us generally, Mr. Salvini, the total number of acres included within the Irrigation District?

A. Around fifteen thousand acres. [366]

Q. And how many acres were being assessed?

A. Well, the District by making the rolls early he assess every land, every acres for bond assessment, then of course the land that is owned by the District or by the county is not paying assessment, and naturally on the next treasury sale in January well it will revert back to the District all the time, and be cancelled off that way.

Q. And how many acres was there in private ownership in 1943?

A. There was around 4400 acres, probably.

(Testimony of B. Salvini.)

Q. We'll have that figure exactly later, your Honor.

A. I'm not sure just of the acreage.

Q. And what was the rate of assessments on the property?

A. Now, the privately owned land, they had an assessment of sixty cents an acre or ninety cents an acre.

Q. And what was that for?

A. Well, there was two kinds of land in the District. There was some land that they had old Hanford Irrigation Water deed.

Q. Old Hanford Irrigation and Power Company deed?

A. And this land, being it was all through the negotiation and court suits, well, the Board of Directors and the people, they decided it was fair to give them a thirty cent discount on their bonds, so that's why we had sixty cent bonds for those lands and ninety cents for the other. [367]

Q. That is, you gave them the equitable credit of thirty cents per acre per year?

A. Per year.

Q. And this sixty cents and ninety cents, was that paid by lands whether they received water or not?

A. Yes.

Q. What did you charge the lands that received water?

A. We charged them six dollars an acre.

Q. Did that include the sixty or ninety cents?

(Testimony of B. Salvini.)

A. No, this sixty or ninety cents was bond, or assessment, we call it, and the other one was rent, total rent for water used.

Q. What was your bonded indebtedness in 1943?

A. Well, in 1943 when we settled it, well, there were \$165,000.00.

Q. \$165,000.00? A. Yes.

Q. Did you receive revenue from the sale of wholesale power? A. Yes.

Q. What did you do with that revenue?

A. Well, that revenue, first we put it in the bond fund until we built up that bond fund high enough so we could make two payments, and we tried to keep the bond payments always at that level, and the balance, well, we could use it for other needs and improvements and repairs of the [368] different instrumentalities of the District.

Q. Do you know, Mr. Salvini, how many different families there were residing in the Hanford—White Bluffs area in 1943?

A. How many families?

Q. Yes, just approximately how many families.

A. I don't know. I know the census of the town that there was in 1940, but I never count the peoples, so I don't know.

Q. Did that include the census of the people on the farm?

A. The people, there was around 1500 peoples in the two towns, but I never got down to figure out how many families there was.

(Testimony of B. Salvini.)

Q. Around 1500 people in the area of White Bluffs and Hanford, is that correct, inside the District?

A. Well, they was all living on the land inside the District, but some of the land was outside the District.

Q. Well, by that you mean it was excluded from the District; it was still under the canal, wasn't it?

A. Yes.

Q. The jury did not see the communities of Hanford and White Bluffs. Could you tell us, were there ordinary facilities for your communities there? That is, you had stores?

Mr. Ramsey: If the Court please, I don't want to [369] inject objections all the time, but it seems to me we're wandering far afield when we get into the matter of what there was in the towns, and that sort of thing. We're confronted with just one problem, and that is the evaluation of the facilities of the District.

The Court: Yes; I don't see the materiality of it, unless it is to apply to this eighty acres of farm land.

Mr. Powell: No, I can explain briefly. The only reason for it, the jury did not see the towns, what was or had been there. I thought perhaps a brief description might be in order. If counsel objects I won't press it.

The Court: Well, I'll sustain the objection. I think it is going too far afield, perhaps.

(Testimony of B. Salvini.)

Mr. Powell: I would like to make the offer of proof that we mentioned last evening. Shall I wait until counsel has finished the cross examination?

The Court: Yes, I think we might put that in at recess time, at 11 o'clock.

Mr. Powell: That's all, then, for now.

The Court: By the way, I wonder if you could supply a copy of that to Mr. Ramsey? Do you have copies of it, two copies?

Mr. Powell: Yes.

The Court: You can supply the court with one, and [370] Mr. Ramsey with one, and we can look it over, and he can decide whether he wants to object, and on what grounds. Will that be acceptable, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

The Court: And then we can avoid reading it. We can give it to the reporter. You may cross examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Salvini, you stated that there was about 1200 acres in the Priest Rapids Irrigation District being irrigated from the District facilities in 1943 when the government took over the area?

A. The year before, I think it was around 1200 acres.

Q. 1200; now, that left about 12,000 acres in the District that were not being irrigated?

A. Well, probably there was 12,000 acres that

(Testimony of B. Salvini.)

never was irrigated, because of sage brush in the district, and they're pumping water from their own wells.

Q. The area that was not at that time under irrigation, however, was subject to sale as irrigated land, was it not? A. Yes.

Q. As a matter of fact, at the time that the government went in there, all of the lands of the District which the District had acquired through foreclosure and otherwise had been optioned to the Priest Rapids Development [371] Company, and the Priest Rapids Development Company were engaged in a colonization scheme at that time to bring in settlers into the Priest Rapids Irrigation District, were they not?

A. Not exactly in the way you want to have it; the Priest Rapids Development Company, they had the option of the land up there, but they were specified just what land they was supposed to sell.

Q. Yes?

A. And there was practically 5,000 acres that didn't was on their option at all, because we figured that land, it didn't was classified as irrigable land, and it was up north, toward Vernita.

Q. Now, let's get this straight. There was about 5,000 acres in the District that was optioned to the Priest Rapids Development Company with the understanding it was not to be sold as irrigated land?

Mr. Powell: I would like to interpose an objection. That is not material to the value case. It seems to present an issue that is outside the issue of the case.

(Testimony of B. Salvini.)

Mr. Ramsey: I would like to be heard on that.

The Court: I understand the purpose of that. I will overrule the objection. Exception allowed the defendant.

(Whereupon, the reporter read the last previous [372] question.)

Cross-Examination

(Continued)

Q. Is that correct? A. Uh huh.

Q. However, as to the other six thousand, six or seven thousand acres, it was optioned to the Priest Rapids Development Company with the understanding that it was to be sold, if possible, as irrigated land? A. Not exactly.

Q. Well, Mr. Salvini, now, the District had these lands which they had acquired?

A. Well, I wish I would have the copy of the contract, and if you read it down, you see there was a provision in there that they were limited to the amount of sale of the land, and to the place where they would be selling, because we would just allow them to sell the land wherever we had provision to deliver them with water, and if we didn't have any provision, if they make any sale then the District was forced to deliver water to those places, unless they build their own canals to come to the water.

Q. In other words, the District didn't want the lands sold so far away from the existing facilities that they would have to put in additional facilities, is that correct?

(Testimony of B. Salvini.)

A. Not—the District won't have to put in any facility.

The Court: I don't think the witness understood [373] the question, probably. Let him read the question back. I'm not sure you understood the question.

(Whereupon, the reporter read the last previous question.)

A. No, the District is not—they don't want the land sold—the District want the land sold, but the District was not forced to go and build the facilities to irrigate those lands if they didn't have it at present when the land was sold.

Q. But it was the purpose of the District to have those additional acres susceptible to irrigation in the District colonized and developed?

A. Yes.

Q. And if all the land that was available there for use as irrigated land was sold, instead of 1200 acres the District would have been called upon to deliver water to approximately 7500 or 8000 acres, wouldn't it? A. Yes.

Q. Now, and at the time that the government took over the project there that scheme of colonization was going forward, wasn't it?

A. Not at the time, not right at the time of the government, because really the purpose of that contract was not active at that time.

Q. Well, then, at what time, and why not at that time? [374]

(Testimony of B. Salvini.)

A. Well, in the way that we got that agency for colonization it was during the W. P. A.

Q. Yes.

A. And at that time, well, we tried to get a loan to rehabilitate, to put in canals, pipe lines, to irrigate all the land that there was irrigable in the District, and one of the provisions that the office there, that Department, they wanted, they thought we should have an agency for that purpose, so we hired the Priest Rapids Development Company for that purpose at that time, because that thing failed, because before we had all the arrangements made, well, there didn't was any more money appropriated for that purpose, so the thing failed, and really, that contract with that agency for colonization, why, we just figured it was at an end, but we never cancelled, and let it go to sell land if they want to.

Q. As a matter of fact, right up to the time the government took over the Priest Rapids District, the Priest Rapids Development Company was selling land in there wasn't they? A. Yes.

Q. And there would have been a large amount, several hundred acres, five or six hundred acres of land, that would have been sold and colonized immediately if the government hadn't come in there, isn't that true? [375] A. Yes.

Q. They had that block of land all dealt with were prepared to turn it over to the new purchasers at the time that the government came in there?

A. Yes.

(Testimony of B. Salvini.)

Q. Now, Mr. Salvini, I wish you would step down here to the blackboard or easel for a minute. I am not sure that I am just straight on this transmission line deal. What does this broken line here represent, the line with the little X bars across it?

A. That is the transmission line.

Q. That is the transmission line. Now, that black at the extreme left hand side of the area, or the west portion of the area, shown on the Defendant's Exhibit 1, at the Priest Rapids power plant and on above——

A. At the power house.

Q. Well, what is this area shown on above the power house?

A. That is a part of the canal that comes down to the power house.

Q. Is that a transmission line there?

A. No, the transmission line starts at the power house.

Q. Starts at this point? A. Yes.

Q. There isn't any transmission line, then, running on up from below the power house on to the west? [376] A. No.

Q. So as to that part, that does not represent a transmission line?

A. Not above the power house. The transmission line started right to the power house.

Q. Yes. Could that be that showing there by the railroad?

A. Well, the railroad is coming along, some places it is just about parallel to the transmission line.

(Testimony of B. Salvini.)

Q. Yes. Now, the power line runs from the power house down the river to Coyote Junction at this point, is that right? That is, the 66,000 volt line? A. Yes.

Q. Now, does it extend beyond that point?

A. Not ours; ours stops right there.

Q. Yes. Is there an extension of that power line from that point on to the White Bluffs—Hanford area?

A. The Pacific Power has got that power line that goes down from there.

Q. Yes. Now, as to the power which is delivered to the Pacific Power and Light Company, other than that which is delivered to the Beverly line here at the power house, is that power sent down this line to this point and there turned over to the Pacific Power and Light Company? A. Yes.

The Court: "This point," Mr. Ramsey, you had [377] better indicate that for the record.

Mr. Ramsey: Coyote Junction.

The Court: All right.

Cross-Examination

(Continued)

Q. The District owns the power line from the power house to the junction here? A. Yes.

Q. It also owns a stub line down to the pumping plant? A. To the pumping plant.

Q. Now, getting back to the power canal, Mr. Salvini, I believe you stated that that was a natural channel, that power canal?

A. One opening is.

(Testimony of B. Salvini.)

Q. One which?

A. One opening it is, or at least that is what I was told all the time, and you could see it up there.

Q. Well, you cut another channel, the District had another channel cut from the river to the canal, up at the intake? A. Yes.

Q. Now, aside from that new cut channel there, is the rest of the canal a natural channel?

A. Except the part down by the power plant, you can see where they cut it, but the rest of the place, down to the spillway, well, it's a natural channel. [378]

Q. Natural channel. Speaking of that spillway, that consists of nothing more than a concrete wall along there?

A. Well, there's a concrete well, then we had a place up there about 100 feet wide, that is, we can regulate the water; whenever is not enough water to go down, why, we can set the plank up there, four-inch plank in the slot in the cement, every twenty feet there's places to set it in, and we can regulate to get more water down to the plant if we want it.

Q. As a matter of fact, if that wall wasn't in there, your water would escape over that natural outlet there at a much lower level than it does down there?

A. No, even if it wasn't there the water, until it gets up to such a level, will never get out of there.

(Testimony of B. Salvini.)

Q. That's true, but this is a natural low place in the wall between the river and the power canal, isn't it?

A. I was told that place was made for that purpose.

Q. Well, that's not answering my question.

A. It's lower now, because naturally we use it for a spillway, but it's not lower than the canal.

Q. You did not cut a spillway, did you?

A. No.

Q. Instead of cutting a spillway, they put in a concrete wall there?

A. The District put in a concrete wall. [379]

Q. I understand that perfectly, but the effect of that wall is to retain the water in the power canal, isn't it? In other words, if the wall wasn't there, the water as it raised in that power canal would escape at a much lower level than it does with the wall in there?

A. No, I don't think it is for that purpose that wall is there; it is just because it is gravel there; if we didn't build up that wall, when the water was up high escaping there it would destroy more bank.

Q. As a matter of fact, that wall was put in to retain the water in the channel, rather than let the water escape over any spillway, wasn't it?

A. Well, that's one of the purposes, too.

Q. Yes. Now, Mr. Salvini, you placed a value of \$40.00 an acre on this land belonging to the District up there at the power site; that is, as to about eighty acres of it?

A. Uh huh.

(Testimony of B. Salvini.)

Q. In your opinion, that represents the fair market value of that particular eighty acres?

A. Yes.

Q. Isn't it a fact, Mr. Salvini, that down in the Priest Rapids Irrigation District itself, that all of these thousands of acres of undeveloped land lying below the ditch and susceptible of irrigation could be bought for \$10.00 an acre? [380]

A. I don't know about that.

Q. Well, I think you do, Mr. Salvini.

A. Not all could be bought for \$10.00 an acre.

Q. Well, I didn't say all. I'm speaking now of the undeveloped, uncleared, unlevelled land down there in the Priest Rapids Irrigation District.

A. Yes.

Q. Below the level of the ditch, which you had under option to the Priest Rapids Development Company, and that was for sale; that could be bought for \$10.00 an acre, couldn't it?

A. Yes.

Q. Thousands of acres; is it your opinion that these eighty acres located up there up that canyon, in that isolated spot, was worth four times what the land was down between or near White Bluffs and Hanford, under the District?

A. Well, it could be sold for that price any time, that land up there.

Q. Do you think that the purchaser of prospective irrigated land would prefer to have a piece of land up there in that isolated spot, rather than down in the District?

(Testimony of B. Salvini.)

A. Well, we refused to sell part of that land up there.

Q. Oh, yes?

A. Because we don't want to sell it. If we sell it, then probably it might hurt us sometime in the future when we [381] want to work on the canal.

Q. Yes, but that still isn't answering my question. Do you think a man interested in acquiring an irrigated ranch would be willing to pay more for undeveloped land up in that area, in that isolated spot, in that canyon, than pay \$10.00 an acre, or one-fourth as much, for the irrigated land down in the Priest Rapids Irrigation District close to the two towns?

A. All the good land would be bought, no matter what it is. You find isolated spots worse than this, you find people interested in it, and if that's a good place, it is just as good as in the valley, and it is worth that much.

Q. Is it your contention that the lands down in the District weren't good land?

A. There was a lot of good land, and a lot of bad land.

Q. Yes, of course. Now, let's get back to my original question, and have an answer to it. Is it your contention that the prospective buyer of an irrigated tract of land would be willing to pay four times as much for an acreage up that canyon, fifteen or twenty miles from any town, in that isolated spot, as he would be willing to pay for good land that could be irrigated under the Priest Rapids Irriga-

(Testimony of B. Salvini.)

tion District in close proximity to the two towns?

A. Well, I still think that location up there, the way the [382] land was situated, he would pay that price for that land.

Q. You think a prospective buyer would be willing to pay four times as much?

A. Well, if you get the same kind of land down below, you couldn't get them at that price.

Q. Well, you had seven or eight thousand acres for sale. Wasn't there any good land in that?

A. You never find eighty acres as solid as that, just as even, land like it is up there.

Q. Well, you could block up any amount of acreage down there in the Priest Rapids Irrigation District, couldn't you, if you wanted to buy it?

A. Well, you could buy lots of acres, yes, but not as good as that one at that price.

Q. Now, Mr. Salvini, prior to 1942 did the Priest Rapids Irrigation District operate their power plant during the winter months?

A. Before we made that, do that work up there in the canal, some winter, well, we shut down one generator, just run one.

Q. That doesn't answer my question. Prior to 1942 did the Priest Rapids Irrigation District operate the power plant during the winter months?

A. Well, there was some winters during the construction at Coulee Dam when they were lowering and levelling the [383] water, that probably we shut down for a short period, but we shut down

(Testimony of B. Salvini.)

practically every spring for a month or so, during the winter, to make the repairs that are needed every year.

Q. Well, please, Mr. Salvini, can I have an answer to my question?

A. Well, yes, we shut it down for that.

Q. Prior to 1942 did the Priest Rapids Irrigations District operate during the winter months the Priest Rapids Power Plant? Now, did they, or did they not?

A. Some years we did not.

Q. How many years?

A. But I don't know, unless I look at the records, just when we did.

Q. Now, the District at various times had some trouble with that power canal up there, didn't they?

A. Have trouble?

Q. Well, high water took out your wing dam on one occasion, didn't it?

A. Not during our time, not during our operation. That happens a long time ago.

Q. Yes. The old channel into the canal silted up, did it not, so that you had to cut a new channel, entrance channel?

A. I don't think it was for that purpose that we cut the [384] new channel.

Q. Well, didn't the old channel silt up until you got very little water through it?

A. Well, I was told by Marvin Chase that in 1928 or 1930 or 1931, Marvin Chase used to be a receiver for the canal, and he went in and worked

(Testimony of B. Salvini.)

and cleaned it out, and after that we never was bothered with sand any more at the head of the canal.

Q. Why did you cut the new channel?

A. Well, that was the suggestion that our engineer give us at the time that we had to shut it down to put in the new generator; he says "Now, you got the time, you could cut the new opening up here and you would get a little lower elevation." I think that's the reason, probably, and you would get more even water from that.

Q. Now, as to the water charge on the acreage down in the Priest Rapids Irrigation District, I believe you stated that your charge was \$6.00 per acre in addition to the 60 cents or 90 cents of bond, interest and retirement fund? A. Yes.

Q. In 1943 there was an assessment made of \$10.00 per acre, wasn't there?

A. Yes, if we would operating, well, we would add \$10.00 an acre in 1943 [385]

Q. In 1943 you had a total bonded indebtedness of \$165,000? A. Yes.

Q. What was your warrant indebtedness?

A. About \$12,000.00, maybe, around eleven or twelve thousand.

Q. Well, now, as a matter of fact wasn't your total warrant and bonded indebtedness \$185,000.00?

A. In 1943?

Q. Yes.

A. Well, now, I knew that when we settled with the government we had \$165,000 more to redeem,

and naturally every year why we were buying back bonds, and we had the money for it. Maybe there was. If there was that much, well, of course we had the money to pay it, and we used it.

Q. The total indebtedness of the District was \$185,000.00, wasn't it, that is, warrant and bond?

A. Yeh, yeh, that's right.

Mr. Ramsey: I think that's all.

The Court: Any further questions of this witness?

Mr. Powell: No, your Honor.

The Court: That's all, Mr. Salvini.

(Whereupon, there being no further questions, the witness was excused.)

HUGH B. TINLING

Called as a witness on behalf of the Defendant,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. State your name, please.

A. Hugh B. Tinling.

Q. Where is your home?

A. Spokane, Washington.

Q. In what business are you engaged?

A. Electrical Engineering and construction.

Q. Do you have a firm there?

A. Yes, I am a partner in the firm of Tinling and Powell, and I am general manager of the firm of Wayne-Burnaby, Inc.

Q. Wayne-Burnaby, Inc.?

A. That's correct.

(Testimony of Hugh B. Tinling.)

Q. Is their office in Spokane too? A. Yes.

Q. Where is the plant of Tinling and Powell?

A. Located at East 706 Sprague Avenue, in Spokane.

Q. In what kind of business is your firm engaged?

A. Engaged in electrical engineering and electrical construction.

Q. Have you taken any college work in engineering, Mr. Tinling? [387]

A. Yes, I graduated from the Washington State College in 1928.

Q. And what degree?

A. Bachelor of Science in Electrical Engineering.

Q. How long have you been working in or with any engineering work? A. Since 1928.

Q. And was your father an engineer?

A. Yes, my father was an engineer engaged in the same business prior to that time; in fact, since 1909.

Q. Did you work with him? A. Yes, sir.

Q. What kind of business was that that you worked in?

A. That was electrical construction, engineering, estimating, maintenance, and repair.

Q. Do you represent any wholesalers of electrical or generating equipment?

A. Yes, we're factory agents for the Electric Machinery Manufacturing Company of Minneapolis, who manufacture generators and switch boards, motors, control equipment.

(Testimony of Hugh B. Tinling.)

Q. Have you ever designed electrical equipment for any power plants, Mr. Tinling?

A. No, I have not designed electrical equipment. I have designed power plants involving the use of electrical equipment. The design of the electrical equipment itself [388] is usually done by the manufacturer of the equipment.

Q. And what plant did you work on?

A. I designed and sold equipment and had charge of the installation of a hydro-electric plant for the Pend Oreille Mines and Metals Company, and had charge of the design and construction of another plant for the village of Bonners Ferry, Idaho, and have done similar work for the town of Troy, Montana.

Q. And about what is the size of the Pend Oreille Mines and Metals Company plant?

A. The Pend Oreille Mines and Metals Company plant is designed for an ultimate capacity of six thousand horsepower, approximately forty five hundred KWA generator capacity in two units, and one unit of twenty two hundred and fifty KVA was installed at the time the plant was built; left space for a second unit.

Q. How do you transfer or convert KVA to KW, Mr. Tinling?

A. Well, your converting your KVA to KW is a little difficult to explain to the layman. In alternating current machinery a certain amount of power is required, a certain amount of current is required

(Testimony of Hugh B. Tinling.)

to produce mechanical power, and a certain amount of current is required to magnetize the iron in the motors, and the percentage the mechanical current bears to the total is expressed in a percentage which nominally is called power factor, and [389] this KW is the mechanical portion of it, and the KVA is the total of the mechanical plus the magnetizing current.

Q. And how does this 2250 KVA plant at the Pend Oreille Mines and Metals compare with the Priest Rapids plant?

A. Well, the individual generators are about fifty per cent larger; however, they are about the same speed, they are the same voltage, and the plant operates at approximately the same head.

Q. So in that respect the plants are very similar, are they? A. That's right.

Q. When was that plant built?

A. That plant was built in 1938.

Q. Is it now in operation? A. Yes, sir.

Q. And have you had any other experience in installing electrical equipment, Mr. Tinling?

A. Yes, we've installed considerable amounts of electrical machinery in industrial plants and substations, and, oh, diesel electric plants, some steam work; the Wayne-Burnaby, Inc., of which I was general manager, installed some 200,000 horsepower of equipment in what is known as the Aluminum Rolling Mill, Trentwood, Washington, about fifteen miles east of Spokane.

(Testimony of Hugh B. Tinling.)

Q. How much did that involve; that is, how much equipment? [390]

A. In horsepower?

Q. No, in dollars?

A. Well, the total installation ran around eight million dollars.

Q. Eight million dollars?

A. Yes, sir.

Q. Did that include transformers, wiring, motors, and generating equipment?

A. That includes motors, generator sets, transformers, sub-stations, power lines, switch boards, lighting; everything required to make a complete rolling mill job.

Q. Have you ever installed or built or taken contracts to build a transmission line?

A. Yes, sir.

Q. Could you tell us some of the jobs that you had in that respect?

A. We took contracts in 1937, up through 1940, for approximately six hundred miles of transmission lines, the bulk of that being for the Rural Electrification Administration cooperatives; one job near Great Falls, Montana, for one hundred miles, and I think we built about one hundred twenty-five miles south of Missoula, Montana, for the Ravalli County Electric Cooperatives.

Q. That's R-a-v-a-l-l-i?

A. That's right; and we built about three hundred and twenty [391] five or three hundred and fifty miles in the vicinity of Lewiston, Idaho, for the Clearwater Valley Light and Power, and we

(Testimony of Hugh B. Tinling.)

built a distribution system for the Army Engineers at Camp Adair, Oregon, a contract for about four hundred thousand dollars.

Q. And did you make some installations in Okanogan and Grant County?

A. Yes, we've built lines and substations for the Public Utility District Number 1 in Grant County, and Public Utility District Number 1 in Okanogan County, and also for the Washington Water Power Company in both of these counties.

Q. What firm did the work?

A. Tinling and Powell.

Q. Have you ever made inventories in rate cases, Mr. Tinling?

A. Yes.

Q. Where?

A. We just completed a study for the Bunker Hill and Sullivan Mining and Concentrating Company at Kellogg, Idaho, who own the electric distribution system at that point. We have also made appraisals of industrial plants, and an appraisal of the utility company lines in the Grant County area for the Washington Water Power Company, and have done some appraisal work for various R.E.A. cooperatives. [392]

Q. Did you go over the Priest Rapids Irrigation District properties in 1943?

A. Yes, sir, I went through all of it.

(Short Recess)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Do you wish to make this offer of proof now, Mr. Powell?

Mr. Powell: Yes, your Honor.

The Court: You have had a copy of this, have you, Mr. Ramsey, to give you an opportunity to read it over?

Mr. Ramsey: Yes, your Honor.

The Court: It may be understood, then, that the offer of proof is in accordance with the typed sheet that has just been handed to the reporter.

OFFER OF PROOF

The defendant, Priest Rapids Irrigation District, offers to prove that it had under discussion and consideration three possible sales of the power plant.

A. In the Spring of 1939, a delegation from the City of Ellensburg visited the Priest Rapids Irrigation District Directors and the Ellensburg delegation met with [393] J. D. Ross at Coulee Dam. The negotiations, however, did not result in any sale.

B. In the Spring of 1942, the Bonneville Administration, through Mr. Arrowsmith, discussed the purchase of the District power plant. Thereafter, Mr. C. Marc Miller, a real estate salesman of White Bluffs, went to Portland and discussed the sale and returned and asked for a contract for the

sale of the plant allowing him a commission. The negotiations, however, did not result in any sale.

C. In January of 1943, the Pacific Power & Light Company representatives met with the District Directors at the substation of the Power Company at Hanford and discussed the purchase of the plant. The District Directors were requested to state their proposition of sale, which they did, and the Power Company representatives advised the Directors that they would confer. Before anything further was heard from them, the condemnation action was started.

Mr. Ramsey: The government objects to the offer of proof upon the grounds and for the reason that value cannot be established by the showing of negotiations for sale not consummated, and for the further reason that the District was without legal authority to dispose of the power plant of the District. In the case of *Adamson [394] vs. Black Rock Power and Irrigation Company*, decided by the Ninth Circuit Court of Appeals, and found in 297 Federal Reporter at Page 905, this very question was presented, that is, the question of whether the power plant could be sold, relieved of its duty and obligations to the lands now included in the Priest Rapids Irrigation District and sold by the Hanford Power and Irrigation Company. The Federal Court in that case defined the question to be passed upon in the following language:

“The chief question is whether, by the trust deed or their deeds of purchase, appellants acquired any variety of right, title, interest or claim in, to, or upon the instrumentalities.”

and the Court went on to comment upon the evidence in the case, noting that the Hanford Power and Irrigation Company, in order to sell land within the District, issued pamphlets advertising the land for sale, including a perpetual water supply, and made reference thereto, and included in the pamphlets photos of the power plant and canal and referred to the function of the plant to supply water to the irrigation system. The court further noted that the deeds from the Hanford Power and Irrigation Company to the individuals provided that the water rights were not personal property, but were appurtenant to the lands. The court then concluded:

“As we view this instrument in the light of the circumstances of its execution and thereafter, the statements, reservations, stipulations, and contract therein constitute [395] a declaration by the Hanford Company that it holds these instrumentalities in trust to the extent necessary for the purpose of water supply to prospective vendees of its lands, and that the vendees in the vendor settlor of the trust may repose confidence it forever will apply said instrumentalities to their use and benefit.”

The Court: Just a minute, Mr. Ramsey. Have you concluded making your objection to the offer of proof here?

Mr. Ramsey: Not entirely, your Honor.

The Court: It seems to me that this is argument in support of your objection. I would prefer that you make objections to offers of proof, and then

separate your argument. I may not care to hear your argument. If I am already with you there is no use in taking the court's time in putting in this argument.

Mr. Ramsey: The principal objection to the offer, then, is predicated upon the fact that the power plant of the Priest Rapids Irrigation District has imposed upon it a trust or obligation in perpetuity to supply power for use for pumping purposes, to irrigate all of those lands sold by the Hanford Power and Irrigation Company under its contracts to the settlers, and there is imposed further an obligation upon the power plant to supply water for the use of the holders of lands, the owners of lands within the Priest Rapids Irrigation District other than those which hold by deed from their grantors, from the [396] Hanford Power and Irrigation Company, and that this trust or obligation imposed upon the power plant is such that the District could not legally offer for sale or sell the power plant, free and clear of that trust imposed upon it by law.

The Court: Do you wish to be heard in support of your offer, Mr. Powell?

Mr. Cheadle: If the Court please, the reasons given for the objection made by the government to this offer of proof are based principally upon the Black Canyon case, which involved one of the predecessors in interest of the Irrigation District, and we submit that there are substantial differences between a private company which owned this plant and at first owned the lands and then sold them,

considerable difference between the legal characteristics of that entity and the legal characteristics of an Irrigation District. We fully realize that an Irrigation District has the obligation to administer its works and retain control of them, to supply the lands within the District with water, but we respectfully submit that the statutes of the State of Washington and the decisions of the Washington Supreme Court fully recognize that an Irrigation District may sell its surplus property, namely, property that is not required to supply the lands within the District with water, and we submit that if these negotiations had developed to the point of sale, and if the District had found a substitute source of pump power which it could have purchased, from Pacific Power and Light Company or perhaps from Bonneville, then it would have been in a position in which it could have sold, merely by action of the Board of Directors, upon posting of notice, the power plant, and certainly and in any event could have sold the power plant following a District election at which the question were put to the land owners in the District. Consequently, on that ground, and as I understood argument it was the only ground submitted for the objection, we submit that the law is to the contrary.

The Court: Well, I think there was another phase of the objection here, that if it is offered for the purpose of showing the value of the plant, that it isn't competent because it is too speculative, but as I understand it, it is offered for the purpose of

showing that since the District might have sold the power plant separately, that the power plant should not be considered as a part of what we have termed the irrigation assets or property of the District.

Mr. Cheadle: That is correct, your Honor.

The Court: The objection will be sustained. The Court takes the view that regardless of whether or not [398] the District had the legal right to sell, that it would be too speculative to go into the question of whether or not the sale might have been made, and it might have been separated, and that power at a certain lower cost might have been procured, or at some other cost, from some other source. I think we should regard this situation as it existed at the time of the taking by the government, and at that time the power plant was an integral part of the irrigation system, and was devoted to irrigation purposes to the extent of the power used for pumping water for irrigation, and on that basis the objection will be sustained. Exception is allowed to the Defendants. Call in the Jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

HUGH B. TINLING

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination
(Continued)

By Mr. Powell:

Q. Mr Tinling, have you had experience with the repair work on electrical equipment also?

A. Yes. The firm of Tinling and Powell operate electric repair and service facilities in Spokane for re-winding, repair of motors and generators, transformers, and for [399] electrical testing of insulation.

Q. Did you have any government or Navy contracts for such repairs during the War?

A. Yes, we were prime contractor with the Navy Department for re-wiring and overhauling of battle-damaged electrical equipment from Pearl Harbor.

Q. That is equipment on the battleships?

A. That's right, electric motors and control equipment.

Q. Did you inspect the electrical equipment of the Priest Rapids Irrigation District in 1943?

A. Yes, sir.

Q. Who was with you when you made the inspection?

A. Mr. Hall was with me part of the time. Certain portions of it Mr. Hall and I were together, and other portions I made the inspection alone.

Q. How long were you there?

(Testimony of Hugh B. Tinling.)

A. I think—this is several years ago; I believe it took about three days to inspect and inventory the equipment.

Q. And have you since that time, or did you at that time, or subsequently, get the value of the property that you inspected?

A. Yes, in I believe in April, 1943, I prepared estimates of the values of the power plant and the transmission lines and the substations and the turbines and pumps.

Q. Were those figures as installed?

A. Yes, sir.

Q. Now, you said in April, 1943. What would be the difference in the value of the equipment as of that date and as of October 1, 1943?

A. I don't believe there would be any difference in values. That was during the period that the O.P.A. had frozen prices on both material and labor, and I don't believe there is any change, even beyond that period, up to the time that the O.P.A. gave special permission, or until—

Q. What was that again?

A. I say, there were no changes in machinery or equipment except where the O.P.A. made specific authorization, and none was made on that type of machinery until a year or so later.

Q. The figures that you have prepared, Mr. Tinling, are figures of the cost of reproducing the equipment in place? A. Yes, sir.

Q. They are figures as to installing this equipment, is that correct? A. That's right.

(Testimony of Hugh B. Tinling.)

(Whereupon, "Cost of Reproduction New, Electrical Equipment, by Hugh B. Tinling" was marked Defendant's Exhibit No. 9 for identification.)

Q. Mr. Tinling, I hand you Defendant's Identification 9, and will ask you if you know what it is?

A. This is a copy of the estimates which I prepared on the value of the electrical and hydraulic equipment owned by the Priest Rapids Irrigation District during that inspection trip in April, 1943.

Q. Do you have the notes with you that you made then? A. No, I don't.

Q. Well, are they in the courtroom?

A. Pardon?

Q. Are they in the courtroom?

A. I don't have the original notes, no.

Q. You have notes that you have taken from the original pencil notes, have you?

A. That's right.

Q. Would you get them so that you may compare them if the question comes up.

A. Yes, sir.

Q. Now, referring to the exhibit, page 1, you have the generating plant and equipment?

A. Yes, sir.

Q. And does the identification contain an inventory of all of the electrical equipment in the power plant? A. Yes, sir.

Q. Now, turning to page 6, that refers to what, Mr. Tinling?

(Testimony of Hugh B. Tinling.)

A. That's a breakdown of the unit cost of various poles and structures used in the transmission line, reproduction [402] cost.

Q. And page 7 is what?

A. Page 7 is the reproduction cost on installing the power line, conductors, and also the anchors for guying the pole structures.

Q. Now, what are pages 8, 9, and 10?

A. 8, 9, and 10 are the inventories of the Coyote Pumping plant, the substation, and motors and pumps and accessories, switch boards, telephone system, spare parts, wiring, telephone system for the operators' houses.

Q. On Page 4 you have the transmission line?

A. Yes, that is a summary of the breakdown of the items on pages 6 and 7.

Mr. Powell: I might state to your Honor that we haven't segregated the last three pages from the other. The last three pages, however, refer to the pumping plant.

Q. Now, the column of figures on the right hand side of the page, Mr. Tinling, and your totals on pages 5 and 10, refer to what?

A. The individual price is on each page, on the right hand side. It shows the values of the various items that are described, and the total on page 5 is the total value of the power generating facilities and transmission line, and the totals on page 10 shows the value of the electrical and pumping equipment and accessories for the pumping [403] plant.

(Testimony of Hugh B. Tinling.)

Q. When you say values, does that refer to what value?

A. Well, what I call replacement cost.

Q. That is replacement cost new, is that correct?

A. That's right.

Q. Pardon? A. Yes.

Q. You haven't in this identification 9 endeavored to put any depreciation percentage in, is that correct? A. That is correct.

Mr. Powell: We would like to offer the identification in evidence, if your Honor please.

Mr. Ramsey: Objected to, if the Court please. Objected to first upon the grounds that the identification number 9 simply is a compilation of what the witness says is the cost price of various items of electrical equipment at the Priest Rapids Irrigation District power plant, on the KV line, 66,000, I believe, and at the pumping plant. If this testimony is to be on the basis of the value of the property at the time of the taking, and we are to proceed upon the theory of replacement cost less depreciation, then the figures here are not admissible for any purpose. The value would necessarily be the replacement cost less depreciation. The figures here appearing are purely the replacement cost, with no [404] depreciation added. It is objected to for the further reason that the witness cannot testify by placing in evidence a compilation of what he proposes to testify to. To do that would be to place in evidence all of the matters on which he intends to testify, without giving to the opposing

(Testimony of Hugh B. Tinling.)

party the opportunity to object to any portion of the testimony, or to keep out of evidence any portion of the testimony. It is already in the compendium that is offered here. The further objection is made that there is included in this the pumping plant and the transmission lines, which it is contended are purely irrigation assets, and should not be valued for any purpose at all. The further objection is made that the District is entitled to merely nominal damages on any and all assets, including the power plant. Further objection is made that if the Court holds that the District is entitled to compensation for assets of the District not wholly used in pumping water upon the lands, then the measure of the recovery which the district is entitled to could only be the market value of those facilities not entirely used in placing water upon the land with the trust imposed upon them to supply the water to the land. In other words, with regard to the power site, it would be what would an informed buyer pay for that power site, having in mind his obligation to supply at cost the power [405] necessary to irrigate the lands under irrigation, plus the lands that in the future might come under irrigation, and not a division of the reproduction cost less depreciation of the plant itself. I submit to the Court that this can only be illustrative.

The Court: Have you finished your objection, Mr. Ramsey?

Mr. Ramsey: Yes, but——

(Testimony of Hugh B. Tinling.)

The Court: If you wish to argue it, we had better argue it in the absence of the jury. As I told you before, I prefer to have you make your objections to proffered evidence as an objection, and then we will follow with the argument.

Mr. Ramsey: This is objection, if the Court please.

The Court: Your objections are very argumentative, Mr. Ramsey. Let us know what you object to, and on what ground. If you haven't finished, go ahead with your objection on the record here.

Mr. Ramsey: The objection is made that the exhibit 9 is inadmissible for any purpose unless it is admissible as illustrative of the testimony of the witness, and that the witness has not yet testified, so that it is not admissible for that particular purpose.

The Court: This proffered exhibit, as I understand [406] it, represents the opinion evidence of this witness as to the reproduction cost new of the property involved here, at least to the extent listed in the exhibit, based upon a study which he has made of this property in 1943.

Mr. Powell: Correct, your Honor.

The Court: It is the view of the Court that in valuing power plant or power distribution properties, because there is no direct market for such properties, that in arriving at a fair cash market value, other things may be offered and admitted as tending to show market value. One of them is reproduction cost new. Another is reproduction cost

(Testimony of Hugh B. Tinling.)

new less depreciation. For that reason I will let this in, even though it shows no depreciation, with the understanding that either side may show the reproduction cost new less depreciation. This one represents merely the reproduction cost new, as I understand.

Mr. Powell: Correct, your Honor.

The Court: In view of the attitude which the Court has taken in this case, which is well known to both counsel, there should be a segregation of the properties devoted to irrigation, and the power plant proper. That, it seems to me, would be necessary for another reason, and that is that there were different times of taking, and the measure of value must be the value at the time [407] the property was taken by the government. The power plant was acquired April 1, 1943; the irrigation works October 1, 1943.

Mr. Powell: The reverse, your Honor. The irrigation works in April.

The Court: Irrigation in April, and power in October. I see; I had it just turned around. For that reason it seems to me that as to the pumping plant structures here, and that part devoted to irrigation, the testimony is that the value he has placed here as a reproduction cost estimate is as of April 1, 1943, is that right?

Witness: It is not April 1, it is about April 22.

The Court: Well, that's near enough to it, and the rest of the property, there should be some showing that there wasn't a substantial amount of

(Testimony of Hugh B. Tinling.)

change, if that is the fact, between April and October. I also think that in order not to confuse the jury, that at some time during the trial here, either on this exhibit or on a sheet attached to it, there should be shown totals totalling separately the witness's estimate of reproduction cost new of the property devoted to irrigation, that is, the part that is a part of the irrigation works, and then separately the total of the power plant properties. With that understanding the objection will be overruled and the [408] exhibit admitted.

Mr. Ramsey: Exception, please.

The Court: Yes, exception allowed.

(Whereupon, Defendant's Exhibit for Identification No. 9 was admitted in evidence.)

Mr. Powell: I have prepared additional copies. Might I ask if the jury might have copies of them, so they can follow the testimony?

The Court: Yes, that's all right.

Mr. Ramsey: Do I understand that the members of the jury are furnished with copies of this exhibit?

The Court: They are furnished for their use in following the testimony of the witness, as I understand it.

Mr. Ramsey: May I have an exception to that?

The Court: Yes, an exception will be allowed. These copies, I may say, should be turned back to the bailiff at recess time, and will be turned back promptly after the testimony of the witness is con-

(Testimony of Hugh B. Tindling.)

cluded. The copies of the exhibits are not to be kept throughout the trial by the jurors.

Mr. Powell: Correct, your Honor, and for the record I might state that the copies the clerk has to hand to the jury are photostatic copies of the original that has been received in evidence. [409]

The Court: Is there any objection, Mr. Ramsey, on the ground that the copies are not true copies of the original?

Mr. Ramsey: No, your Honor, that's not the basis of the objection at all. If the court desires me to state the basis for my objection, I would be very glad to do so.

The Court: Yes, I think you may state that, surely.

Mr. Ramsey: It is objected to upon the grounds that it is placing into the hands of the jury and giving undue weight to the particular testimony here proposed to be adduced, that is, exhibiting to the jury and placing in the hands of each of the jurors a tabulation of the testimony which counsel proposes to adduce from this witness.

The Court: Well, counsel could read this to the jury, and then they're presumed to remember it. It has been the practice to allow that in this court in these cases, and I will extend the same privilege to both sides, of course, and the government will have its exception.

(Whereupon the Clerk distributed copies of Defendant's Exhibit 9 to the jury and one alternate juror.)

(Testimony of Hugh B. Tinling.)

Direct Examination

(Continued)

Q. Now, Mr. Tinling, referring to page 1 of Exhibit 9, Generating Plant Equipment, Item 1 is what?

A. The first item covers the substation, and the substation [410] is made up of a number of parts to make a complete unit.

Q. Where was the substation in the power plant?

A. The substation is in the lower floor, and on the river side of the power house. In other words, the jury, I believe, was in the basement, and went in and saw the transformers and the equipment that is listed under substation is the equipment that is in that room where the transformers were located.

Q. The substation, then, is the transformer room, is that right?

A. Part of it, that's right.

Q. And are the items as listed under that subdivision the items that you found there in 1943?

A. Yes. The first items there, of three 200 Ampere, 60 K. V. Single Pole, Single Throw Switches, \$325.00, were disconnecting switches. The next item is known as an oil circuit breaker. It is a switch in which the contacts operate in oil, and those were to the left of the bank of three transformers. The next item was a set of choke coils which were originally installed for lightning protection, and I believe were located up high on the wall, and the three transformers were the three big

(Testimony of Hugh B. Tinling.)

units in the steel tanks, that were set in cubicles along the river side of the power house, on the transformer floor.

Mr. Ramsey: May the record show that my objection [411] to Exhibit 9 goes also to the testimony of this witness on all items therein appearing?

The Court: Yes, the record may so show.

Direct Examination

(Continued)

Q. The values as placed on the substation items are what value?

A. Those are new values, based on quotations from the manufacturer of that type of equipment in April, 1943.

Q. In April, 1943? A. That's right.

Q. What was the value of these items on October 1, 1943? A. The same.

Q. The same? A. Yes.

Q. Why do you say they were the same?

A. Well, the prices were unchanged during that period, both as to the value of equipment and as to the wage rates which would have been paid to labor for installation of that equipment.

Q. Does that same thing apply to all of the items where value is shown, Mr. Tinling?

A. Yes, sir.

Q. Now, go on, if you will, please, to the next item.

(Testimony of Hugh B. Tinling.)

A. Now, Item 2 is Generating Unit No. 1. That covers the Allis Chalmers Generator, which was the generator farthest [412] from the door as we entered the power plant. That has a value of \$24,000.00. The water wheel is down below the generator on the water wheel floor. The Allis Chalmers Governor was replaced since the time this inventory was taken, and there is now a General Electric, or rather, a Woodward Governor installed on the generator floor beside the Allis Chalmers Generator, and the rotary pump for operating the governor was also replaced at the same time as the governor.

The third item, Generating Unit No. 2, was the General Electric Generator, which was nearest generator to the door of the power house, valued at \$27,000.00. The Woodward Governor and alarm and pump, the governor was located near the generator, and the oil pump that operated the governor was located to the left of the door as they entered the power house, and the water wheel, of course, was down in the pit below the lower floor.

Q. Now, when the jury was there on Monday which generator was being operated?

A. The General Electric Generator that is known as Generating Unit No. 2.

Q. And that is the one you have just been describing?

A. That is right.

Q. The propeller type wheel is located where?

A. Generating Unit No. 2, nearest the door.

(Testimony of Hugh B. Tinling.)

Q. And that was also being operated?

A. Yes, sir.

Q. All right.

A. The next item, number 4, the exciters, are direct current generators used to supply direct current for exciting the alternating current generators, and the exciters were located between unit No. 1 and No. 2 on the first floor. One of them is a vertical generator which is driven by a water wheel down below the lower floor. The second unit is a motor generator set, and was a generator driven by a motor, and the water wheel driven Allis Chalmers exciter has a governor there which had been there, I guess, since the plant was built. It was not in use. That was run at a fixed speed, and they set the speed and the load and do not use the governor to operate. I believe the District has put that in at a salvage value of \$25.00. The vertical exciter is listed at \$3600.00; governor \$25.00, and the motor generator at \$2100.00.

The next item, number 5, refers to the switch board, which was on the west side of the power plant, as you came in, and between the two generators, and the switch board was made up of a number of panels, and the equipment that is on those panels has been listed, and the price listed above as switch board covers all the [414] switch board, including all the auxiliary equipment, meters, current transformers, and the instruments that are on the switch board.

(Testimony of Hugh B. Tinling.)

Q. Each of these panels has a different, distinct, use, has it?

A. Yes, nominally they use one panel for each generator, or a panel for what they call synchronizing voltage panel. They have another panel for generator number 1 and number 2, easily designated that way, so they can group the meters and control the feeder unit. These panels are grouped so that they have the controls or instruments for each machine or feeder on one panel, so the operator can refer to that one panel and know that refers to one machine or feeder, and do away with confusion. The equipment listed on that switch board, which is included in this \$4260.00 price, continues over to page 3 and the top portion of page 4.

Q. Now, had you had any recent experience with a similar panel plant, Mr. Tinling?

A. Yes, this plant is in a great many respects very similar to this Pend Orielle Mines and Metals plant which was installed in 1938, both as to range and capacity and also the general characteristics of the equipment we installed.

The Court: Well, we'll recess until 1:30. Maybe the lights will be on by that time.

(Whereupon the Court took recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February, 12, 1947

1:30 o'clock p.m.

(All parties present as before and the trial was resumed.)

HUGH B. TINLING

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Tinling, I believe you had completed the description of the panels. What is the next item that is on page 4?

A. The next item, item number 6, under Station Lighting, which included the electric wiring, fixtures, fuse panels, and lighting the power house, was in the amount of \$560.00.

Q. Pardon?

A. I say that was in the amount of \$560.00.

Q. How much wiring is there in a power plant such as this?

A. You're speaking of wiring for lighting, or for power?

Q. N, the item 6, Station Lighting.

A. Well, that included all the lighting for your main floor, the water wheel floor, substation, and convenience outlets they would use for portable tools for repairs, the [416] light panel, possibly a transformer for stepping the voltage from 2400 to 240, the lighting fixtures that would be necessary

(Testimony of Hugh B. Tinling.)

in there, and the lighting on the outside to give illumination for entering the power plant.

Q. Was the lighting there similar to the station Lighting you installed in this power plant you refer to?

A. Oh, the number of outlets and lights were about equal, however, the lighting installed in that plant is somewhat older, the fixtures would be an older design, than what would be installed in a newer plant. However, so far as giving illumination, it gave the necessary illumination for the workers to go about their work.

Q. Now, the next, Station Wiring?

A. Item 7, which is the Station Power Wiring, includes the actual installation of conduit or steel pipe, which we call conduit, in the electrical industry, and the cables that run from the switch board to the generators and the generator sets and exciters, and the control wiring to the switch board, headgates, and various accessories in the station, and also the wiring which furnishes what we call station power, in other words, motors to operate the headgates and control on your governors, and you have motors on your oil pressure pumps; it is miscellaneous power that is consumed in the station. I believe they also had a small amount of electric heat that they used [417] in the operator's office.

Q. And the amount of that item?

A. The amount of that item was \$6250.00.

(Testimony of Hugh B. Tinling.)

Q. You have an item there of a pump that you haven't valued?

A. No, that pump is the pump that has been referred, I believe, in the previous testimony, as a pump that was used to irrigate the land, I believe, in the vicinity of the power house, and I did not price that in here with the power house equipment; however, I did estimate the value of the motor and the pump and the installation as around \$1700.00.

Q. Now, the next item, power lines?

A. The Power Lines, that includes the labor and the material, conductor, poles, cross arms, insulators, everything necessary to build the power line, which ran from the power house to Coyote Junction down to the Coyote Pumping Station, and that list of structures was made up from a physical count which I made by going over the line, and then taking the structures, each type of structure, and pricing it with the values of materials quoted by the manufacturers in April, 1943, an estimate of the labor in arriving at a unit price, which is on pages 6 and 7, and then taking the quantities of the structures times the unit price gave us the totals which are on the right hand side of this page, and you [418] have, incidently, sixteen miles of power line. There's 580 pole structures, at an average cost of \$70.57 each, gave a price for the lot of \$40,930.60; 160 Anchor structures at \$33.22, at a total cost of \$5315.20; one switch structure at Coyote Junction on which we made a lump sum estimate of \$500.00.

(Testimony of Hugh B. Tinling.)

Q. Just describe what that structure was.

A. That was a switch structure where the line terminated at Coyote Junction, I believe shown on your map there.

Q. That is Exhibit 1, the map on the board there.

A. Yes, Exhibit 1, where the line came in to Coyote Junction, and I believe the Pacific Power and Light Company came in to that point, and also the tap line went to the Coyote Pumping Plant, and they had switching equipment there so they could disconnect the Pacific Power and Light and the Priest Rapids Irrigation District. The conductor on that line is about a 4/0 aluminum. It is a type of conductor that was used at that time, different than is used now. There is approximately 263,000 feet of the conductor and the accessories necessary to string it and put it on the insulators, at a value of \$34,200.00, and then the labor and expense of stringing the wire, which is detailed on page 7, \$4997.00. The total of that section would be about \$85,942.80.

Q. Now, while we're on that, Mr. Tinling, you have been [419] requested to make a division of this as to the amount going down from the power house to Coyote Junction? A. That's right.

Q. And from Coyote Junction down to the Pumping Station? A. That is correct.

Q. Where is most of the difficult construction of the power line?

(Testimony of Hugh B. Tinling.)

A. The most difficult part of the construction is where you approach the last few miles, where you approach the Priest Rapids Power Plant. It is on the left hand side of the road as we were going into the plant, and is up on the hillside there, rather inaccessible, and in solid rock where it is difficult to make the holes, and also difficult to bring the poles in and string the wire.

Q. What about the construction from Coyote Junction down to the pumping station?

A. Well, that was relatively open compared to the rest of the line.

Q. And what would be a fair division of the two, that is, of the values you have, between the power line from the power plant down to Coyote Junction, and from Coyote Junction to the pumping station?

A. That will be—from the Coyote Junction down to the Coyote Pumping Station was approximately one and a half miles, and the cost of that proportion of the line would [420] not exceed ten per cent of the total.

Q. Then you would say one tenth, then, of the total amount?

A. Would be a liberal amount, because that's the less expensive portion to construct.

Q. And you have already started a tabulation of that, have you not?

A. Well, it would be a ten per cent of the total of that section, which would be \$8594.28, if you

(Testimony of Hugh B. Tinling.)

took ten per cent of that portion of the section for that portion of the line.

Q. Would you give us that figure again, please?

A. \$8594.28.

Q. Now, while we're there, for the benefit of these of the jury who don't know about stringing or about the poles, would you mind detailing the work that is necessary in preparing and setting a pole, and assemble it?

A. Well, that data has been detailed on page 6 of the exhibit, under the heading of the Priest Rapids Irrigation District, Work, Pole Structures, and I have prepared a bill of material that would be used in case of replacement of that line, and also shown the items of labor, and the poles used were 40 foot, an average of a class 4 pole. Class 4 determines the weight or diameter of that pole, and we've taken figures from the manufacturer of the pole to determine the value of the pole, which was [421] \$16.65, and one would be required for a structure, and for putting on the top assembly, in other words, your cross arms, your pole top pins, your insulators and pins, listed the billing of the material, and you put on your hardware and insulators, four 2 inch washers, 12 cents, two cross arms, one of which was used to carry the power insulators and the lower one for telephone, a value for the two of \$3.60, the two cross arm braces, they're used only on the power conductor, not on the telephone, a value of 50 cents for the two, four $\frac{5}{8}$ inch machine bolts to bolt

(Testimony of Hugh B. Tinling.)

the cross arms on and bolt the pole top pin which goes up at the ridge of the pole, four of those at a price of 92 cents, two, $\frac{3}{8}$ inch carriage bolts to fasten the cross arm, value 10 cents; one lag screw for the braces, at 6 cents; there's three 60,000 volt porcelain pin insulators, two of them on the cross arm, one on the ridge pin on top of the pole, value of \$18.03; two insulator pins, they were used on the cross arms to support these insulators, value \$3.28, and one steel pole top pin, that went on top of the pole to support the top insulator, value \$1.21; on the lower cross arm, two telephone insulators, value 10 cents, and two telephone insulator pins, value ten cents; for tying the wires to the insulators you have 24 feet of tie wire, estimated at 36 cents, and for tying the telephone wires to the [422] insulators, four feet of tie wire, value 4 cents.

That's your bill of material required on a typical structure used on that line. In your labor you would have certain operations, gaining the pole, that's cutting a slot where your cross arm fits in, so it can't move out, and drilling a hole for the bolt to mount the cross arms on, and then to mount the cross arms, and the bolts and the hardware, a cost of \$4.63; for digging the hole, the estimated cost of \$12.05 average on that line, and raising and setting and aligning the pole, estimated at \$7.00; and for back filling the hole, and tamping in, and hauling the pole to location, is estimated at \$1.82, making a grand total for your pole structure of \$70.57; on the next page—

(Testimony of Hugh B. Tinling.)

Q. Now, before we leave the pole structure, Mr. Tinling, what experience have you had with the matter of selecting grading, and purchasing of these poles?

A. Well, I've had—I am also in the business of manufacturing poles. I own a part interest in a pole yard, and I am a member of the American Wood Preservers' Association, and have had occasion to observe the life and weathering and depreciation of poles over a period of years I've been in the construction business.

Q. And now, about digging the holes for these poles, how deep are those holes dug? [423]

A. Normally on a 40 foot pole they will dig those about six feet deep. It will vary. If it is in a rock, why, it may take a foot less.

Q. All right; you have raising, aligning, and setting the pole, \$7.00?

A. Yes, that is the work that it will take a crew of men to raise that pole up off the ground, and with a 40 foot class 4 pole you will probably have around an eight or nine men crew, possibly more in the rough country. Of course, in level country, they do part of that work with a truck and winch and A-frame derrick, but on part of it, you would have to have more men in order to get those poles up into location in rough terrain, so they take, say, an eight-man crew there to raise that pole off the ground, get the butt in the hole, and straighten it up, then hold it while you back fill and tamp that hole full of dirt and align that pole so it is in line with the rest of the poles in the power line.

(Testimony of Hugh B. Tinling.)

Q. Now, yet's go on to the next item.

A. On page 7 the first item is the labor and expense of stringing the wire. I have outlined the estimated dollars required for that operation, which includes hauling the reels to the scene of location; the wire in that size of conductor comes on large wooden reels, and that has to be hauled to the location and raised up with reel jacks on an [424] axle so the wire can be pulled off, or if the ground is level enough they would hook the reel on a truck, or I suppose in the early days on a wagon, and drive along and string that wire on the ground, and it is estimated for the 263,000 feet of wire involved in that line you would have the operation of hauling the reels to that location, stringing your conductor, and the next operation would be hanging what we call a stringing dolly on the cross arm, actually, what that is, it is called a snatch block, a block with a pulley in it, like a block and tackle, except on one side it has a hook so you can open it and drop the conductor in. Those are hung on each cross arm, the wire is put in those dollies, or pulleys, and the next operation would be pulling the conductor to a tension and dead ending that conductor. That conductor has to be pulled to a certain tension, certain amount of clearance, to gain clearance, and it has to be on the pulleys so you won't have friction on the cross arm, otherwise you might have different tension on another spot of the line; so that the wire would be reeled back and forth through the pulleys and then equalize and dead

(Testimony of Hugh B. Tinling.)

end the wire, and the next operation would be to take that wire out of the dollies and put it on the insulators and tie it to the insulators, and remove the dollies and terminate the work on the stringing. The estimated labor [425] cost for that operation, for that line of 263,000 feet of wire, was \$4997.00, as shown here on the right hand side.

Q. Now, the next item?

A. The next item is your Anchor Assemblies. Wherever your pole is out of line or where your line makes a turn of a corner, or where you dead end, of course, that pole has to be anchored to hold it upright against the pull, the tension of the conductor, and for that anchoring we have made up a typical bill of material, which includes a 12 inch by 5 foot creosoted anchor log, which is just a five foot log which has been treated with creosote, which is a preservative, and it has a hole drilled through it so the anchor rod can be placed through it, and the washer and the rod, four by four inch washer, and five-eighths inch by seven foot galvanized anchor rod, which has a thimble eye in the top, and a galvanized thimble, which is simply a protector to go through this eye to protect the guy wire that goes around the rod, and to make up this guy to the pole would require approximately fifty-five feet of guy wire, to go around the pole and come down at a forty five degree angle, or more, as may be necessary, depending on the terrain of the ground, and to terminate the guy wire and guy around the pole and tie it they use

(Testimony of Hugh B. Tinling.)

what they call a three bolt guy clamp. One of these is used at the top of the pole, after the guy wire is wrapped around the pole, two more on the guy insulator which is in the middle of the wire, between the pole and the ground, and the other one is used at the bottom of the guy, where it attaches to the rod.

At the top of the pole there is an item of two, they show 4 inches by 8 feet, that should be four inches by eight inches, strain plates, galvanized; simply pieces of metal that go around the pole to protect the wood of the pole from being scarified or broken by this wire becoming too tight.

The next item is 4 "J" Hooks to fasten in there with lag screws, to keep the wire from sliding down off the pole, off these protective plates. 4 lag screws are used with the "J" hooks, and an item of 8 galvanized nails which you usually use to nail the steel plates, and one insulator, used in the guy wire to insulate it from the top of the pole, and one guy guard, which is installed there so somebody doesn't walk into or drive into that cable on the guy wire.

On the labor, you have your first item of digging the hole, which is an operation again similar to the pole hole, and is estimated at \$12.52 as an average cost of digging the hole; assemble the anchor, estimated at 75 cents; putting that anchor in the hole, back filling and tamping, \$4.24; making up the guy, that is, wrapping [427] it around the pole and fastening on these three bolt clamps,

(Testimony of Hugh B. Tinling.)

fastening on the insulator, and fastening it to the guy wire, we estimated \$4.50; installing the guy guard, 54 cents, or a total of \$33.22 for the complete anchor structure.

Those items are the basic items making up your power line, and those are summarized under your item 8 on page 4.

Q. The items you have just detailed refer, then, to the items referred to on your Power Line item?

A. That's right, yes.

Q. Now, what is your item 9, Mr. Tinling?

A. Your Item 9 are your storage batteries, which were in the Priest Rapids power plant at the time of the inspection and were used for an alarm system there. In other words, if something went wrong it was part of the alarm system, in case a switch would kick out, or in case of trouble of any kind in there they had these storage batteries and the charging facilities for keeping those batteries charged, which is an item of \$270.00.

Q. The next item?

A. The next item is item 10, under Miscellaneous, and item A is your head gate control. You have a motor there that drives the head gate mechanism for raising and lowering the gates that admit the water to the power plant, an item [428] of \$175.00 for that motor. Item B, the power house crane, an estimated cost of \$3600.00.

Q. Where is that crane located?

(Testimony of Hugh B. Tinling.)

A. That is located above the—overhead in the main room of the power house. It is used for installation or repairs, assembly or dis-assembly of the generators and water wheels.

Q. And your next item?

A. The next item is the spare parts that were available, and there were six spare stator coils for the old generator, \$60.00; there is one 15 horsepower 110 volt direct current vertical motor, which was in bad order, which we valued at \$750.00; one set of spare coils for the main power transformer, valued at \$1700.00.

Q. And your next item?

A. Item 12 is under the heading of operators' houses distribution system and wiring, and that item includes the overhead power line that runs from the power plant to furnish light and heat to the operators' houses, and it included three 10 K. V. A. transformers and the service drops and the wiring from the pole to the operators' houses, a total of \$940.00 for the three houses; and then the next figure, total cost of generating equipment, transmission line and pumping equipment; that pumping equipment shouldn't be in there, because we didn't price that one item of pumping [429] there; you're evaluating power property, and that \$1700.00 item that I mentioned earlier, on page 4, is not included in that total; but the total cost of generating equipment and the hydraulic equipment is \$250,557.80, and we've estimated engineering and legal and interest of \$20,044.62, or the total of \$270,602.42.

(Testimony of Hugh B. Tinling.)

Q. That now includes this item of ten per cent of the transmission line?

A. That's right. If you're going to assign ten per cent of the transmission line to the pumping facilities, why, then, you would reduce that figure by \$8594.28.

Q. Now, this pumping equipment that you refer to, is that the pump that is in the power house?

A. That's right. There were some other pumps in the power house that were used for drainage and things like that, that were really part of the power equipment, circulating water through the power house, used for cooling the generators, and bearings, and things like that; those are included in here, but this one pump that was used for pumping water to the farm is in this item of \$8,594.28.

Q. Now, in the next section, Mr. Tinling, you refer to what?

A. Your next section is the electrical equipment and the hydraulic equipment for your Coyote Pumping Plant, and the first item there under item 1, page 8, is your substation, and included there you have a 200 Ampere 3 pole [430] 60,000 volt gang operated air break, \$325.00; three sets of 60 K. V. choke coils, \$300.00; you have three General Electric 600 K. W. transformers, \$10,500.00; and two 4 Pole structures at \$850.00. That is the substation equipment proper.

Q. Now, where was that, where is that substation located from the pumping plant?

(Testimony of Hugh B. Tinling.)

A. That was just a little up the river and across the road from the pumping plant, when we were down there looking at it on the inspection trip, the jury.

Q. Where is the 4 pole structure?

A. Part of that structure is right in front and around the building that those three transformers were housed in, and the other 4 pole structure was up on top of the hill, about, oh, I would judge a hundred yards up the hill from the pump house and substation building.

Q. The next item?

A. The next item is the inventory of equipment in the pumping plant proper, and the items in there included, the first was two Allis Chalmers 450 horsepower 174 R.P.M. three phase vertical motors. These were the motors that were each at the extreme end of the pumping plant, the pump house there. There is one just to the left of the door as we came in, one beyond it, and another one at the extreme right end. I believe they were both covered up [431] with canvas when we were in there. Those at the time of the inspection had platforms and stair rails on them, were assembled.

Q. That was when you examined them in April 1943?

A. That's right. I was noticing when I was down there Monday that part of those had been dis-assembled, the stairway and platform had been removed, and were set off to one side there.

(Testimony of Hugh B. Tinling.)

Q. By the way, Mr. Tinling, was the transmission line still there from Coyote Junction to the pumping plant when you were down there?

A. That was there in April, 1943. It was not when we were down there Monday.

Q. What about the transmission line from Midway substation?

A. Well, that line of course has had changes and additions made to it since it was inspected in April, 1943, quite a number of changes, and I guess certain portions of it have probably been taken out and replaced. At least, some of the structures appeared to be new.

Q. What about the wire itself on the line east of Midway substation?

A. It appears to be the same wire that was there before, as near as I could tell. Of course, I didn't make a detailed inspection. It seems to be the same conductor that was there previously. [432]

Q. On which side of Midway substation was the transmission line the same on Monday, or on both sides of the Midway substation, as you recall?

A. I don't know as I recall the other side particularly. I did not check it. I did not notice your conductor from Midway down the river.

Q. You say you did not?

A. No, I say I did not notice that. As a matter of fact, a good share of the time you're too far away to be able to tell from that distance whether it was the same wire or even the same size, or near the same size.

(Testimony of Hugh B. Tinling.)

Q. Now, going back to Exhibit 9.

A. Continuing here with this first item, this price of \$20,000.00 includes the two motors. The next item is the General Electric 675 horsepower 300/265 R.P.M. three phase slip ring motor. That was the machine just to the left as we entered the Coyote Pumping Plant station. That also was covered with canvas in an attempt to keep some of the dirt out. That motor was priced at \$11,000 installed. The next item is two 35,000 gallons per minute pumps, and those were the two pumps down in the basement, on the lower floor, underneath the two Allis Chalmers motors, and those were estimated at \$2500.00 each, or \$5000.00 for the two. The 28,000 gallon per minute pump, the next item, is the pump that was driven by this General [433] Electric 675 horsepower motor, and it was in the basement below that motor, directly connected with it. The next item is the reciprocating pump, on which there is a price of \$750.00. I didn't notice that pump there; I don't know whether it's been removed or not since the time the inventory was taken. The next item was a 5 horsepower 900 R.P.M. vertical motor driven pump, valued at \$175.00. The next is two Allis Chalmers 5 horsepower motor driven centrifugal pumps, valued at \$350.00 for the two pumps, and incidentally, I believe most of these pumps have been removed since this inventory was made.

Q. That is the smaller pumps, you mean?

(Testimony of Hugh B. Tinling.)

A. Yes. Then there is one item here of a Westinghouse 50 horsepower motor driven centrifugal pump, valued at \$2560.00, and I didn't see that pump there either on Monday; and there were two items of one-third and one-sixth horsepower centrifugal pumps of the value estimated at \$100.00.

Your next item, 3, on page 9, is the switch board panel that was installed in the Coyote Pumping Plant, and that has been broken up into the various panels 1, 2, 3, 4, 5, 6, and 7, and the list of equipment on each panel is listed there, and those panels have been priced on the basis of the instruments and transformers and equipment involved on each one of those panels, the lump [434] sum for the entire switch board, \$3800.00. Incidentally, those panels also include the starting equipment for these three pump motors and also for the other motors which were in that pumping station.

Q. What starting equipment is that?

A. Well, there is on the two large pumps, the Allis Chalmers, they have what they call the auto-transformer, providing reduced voltage for starting those pumps, and on the General Electric motor they had a drum controller and what we call grids or resistors.

Q. A what?

A. A drum controller which was used to start the General Electric motor and also to vary the speed of it to get different outputs from that pump. The next item, number 4, Miscellaneous, is the telephone system that ran from the pump house to the

(Testimony of Hugh B. Tinling.)

operators' house, and the wire and the telephones, estimated at \$75.00, and there's a ten ton crane in there which was used for installation and also for removal of parts or for repairs of the pumps or motors, on which we have a price of \$3200.00; and there's a spare set of coils at that location for the transformers, which was estimated at \$1700.00; and 6 is wiring for the pumping plant. That included the setting of the switch board and running the conduits and the wires and connecting up the motors and the lights and the starters and everything required to make a complete operating unit of that pumping station, estimated at \$2800.00; and item 7, the operators' houses wiring and distribution system, which involved a short 2300 volt line and two 5 K.V.A. transformers and the service drops, was estimated at \$350.00. Item 8, miscellaneous plant piping and valves, in other words under the item domestic water there to supply water to the operators' residences and for use around the pumping plant, and the piping required for that was estimated at \$1400.00, making a total for the pumping plant of \$68,735.00, with estimated engineering and legal expense and necessary expense of 8 per cent, or \$5498.80, making a total for the pumping facilities at the pumping plant of \$74,233.80.

Q. To that, Mr. Tinling, there should be added, should there not, to segregate the two, the 10 per cent you have taken from the other transmission line?

(Testimony of Hugh B. Tinling.)

A. That's right, to that \$74,233.80 you would want to add this 8594.28.

Q. Would you mind making you calculation, Mr. Tinling, by deducting your ten per cent from the total of two hundred seventy thousand dollars that you mentioned as the total of the generating equipment?

The Court: I might say for the information of the [436] jury in keeping their notes here that the original of this exhibit and all other exhibits that are admitted in evidence in the case here throughout the trial will go to the jury room with you. You will have the originals of all the exhibits available when you start to deliberate upon your verdict.

The Witness: Taking that portion of the line that would be charged to the pumping plant, subtracting that from your total for the Priest Rapids Power Plant, would give you a revised total for the Priest Rapids Power plant of \$262,008.14, and it would increase the total value of the Coyote Pumping Plant to a total of \$82,828.08; that's omitting your 8 per cent legal fees and so forth on both your addition and subtraction.

Q. Now, that is a matter of simple computation. You've taken 10 per cent of the pole line cost from the generating equipment and put is on the pumping equipment, is that correct?

A. That is correct.

Q. Now, there was one item I believe you said that you had not valued in the listing, and that is on page 4?

A. That is correct.

(Testimony of Hugh B. Tinling.)

Q. Did you give us an estimated value on that item?

A. Yes, I estimated that at \$1700.00.

Q. Could you add that to your total, then, of the generating [437] equipment?

A. Yes, sir. Are you going to add that to the generating, or to the pumping?

Q. Well, it is in the power house?

A. It is in the power house.

Q. I think it probably should be added to the generating equipment if it is located there in the power house, Mr. Tinling, not used in connection with irrigation district property.

A. With that \$1700.00 added it would make a total for your power house of \$263,708.14.

Q. Now, for the record, Mr. Tinling, you have not read all of the values in the first part of the exhibit, that is, the generating plant equipment, into the record, have you? A. No.

Q. You have omitted some of the items?

A. That's right.

Mr. Powell: I don't see any necessity for putting them in, your Honor.

The Court: No, indeed. We can all read. If he says that's what they are, it is shown in the exhibit.

Mr. Powell: I want to call Mr. Tinling a little later, after he's had an opportunity to check the tabulation which he made, and that's all for now. I may call him later for that. [438]

The Court: You may cross-examine.

(Testimony of Hugh B. Tinling.)

Cross-Examination

By Mr. Ramsey:

Q. Mr. Tinling, the values that you have placed upon the generating plant equipment and the pumping plant equipment and the transmission lines are the replacement value of those items listed as of 1943 plus the estimated cost of installation, is that correct? A. That's right.

Q. Your testimony as to these costs do not reflect any deduction by reason of obsolescence or by reason of depreciation? A. No, they do not.

Q. If you were valuing that plant, that is, the power plant, the pumping plant, the transmission lines, for the purpose of purchase or sale, would you value on this basis, or would you value on the basis of replacement cost less depreciation and obsolescence?

A. That would depend, Mr. Ramsey, on whether you're buying it as a going concern, or whether you're selling it out on the curb, and saying "How much can I get for the machinery and equipment and so forth as is, and as junk." However, if it is a going concern the equipment in there is producing the same amount of power as it was forty years ago; in fact, more.

Q. Your idea, then, is a generator that was installed forty [439] or fifty years ago and is still working is worth just as much as it was the day it was put in there?

A. So far as producing revenue, yes.

(Testimony of Hugh B. Tinling.)

Q. What would you say about the possibility of necessity of replacement of that generator?

A. I don't know of any reason why they would want to replace it. It is operating; it is producing around 1200 kilowatts of power.

Q. Do I understand, Mr. Tinling, that once you install one of those generators, you may expect it to run in perpetuity without being replaced or repaired?

A. That is correct. You have repair on any piece of equipment or machinery, but it is maintenance and repair, and it is not being depreciated.

Q. But it never wears out, is that correct?

A. No reason why it should, if it is kept in repair.

Q. That's true of the pumping plant also?

A. Yes; if the bearing wears out, and is rebabbitted, that bearing is in just as good condition to operate as it was new.

Q. Is there any reason, then, why the value of a piece of machinery a hundred years old shouldn't be as great as when it was new?

A. If it will do the same work now.

Q. The question is, is there any reason why there should be [440] any depreciation of the value of machinery?

A. Again getting into the question of whether you're using it as a going concern, or scrap metal.

Q. It is a question here of the value you would place on this sort of thing for the purpose of sale or purchase.

(Testimony of Hugh B. Tinling.)

A. In this particular instance I would say that the machine would be just as valuable to me as a new machine.

Q. It isn't a question of value to you, Mr. Tinling; it is a question of market value of the machinery.

A. You're talking of market value of the machinery, or of the power plant?

Q. Market value of the entire unit.

A. I would say it is worth as much now as it was worth forty years ago, from that standpoint.

Q. Very well, let's go back on the matter of the electrical units of machinery, and what have you, that was produced forty or fifty years ago. To your mind are those units just as good as the one that is produced now?

A. What do you mean by "just as good"? Produce as much current, or more current? In other words, this machine produces just as much current, rated 1200 kilowatts, produces 1200 kilowatts; if you bought a new machine you wouldn't get any more, any less, any better.

Q. You don't recognize obsolescence, then, in electrical equipment? [441]

A. No, not in the sense you would in an automobile, where it is a matter of personal convenience. If you're producing power, it is the same; you can't distinguish between that power and that from the generator installed in 1941.

Q. Far as that's concerned, referring to an automobile, if it had a 40 horsepower motor, and was

(Testimony of Hugh B. Tinling.)

produced forty years ago, and you were comparing it with the 40 horsepower motor produced at the present time, they both generate 40 horsepower?

A. That's right.

Q. Is the motor 40 years ago of the same value as that today?

A. Depends on what you're using the motor for.

Q. I am assuming if it was a motor for the propulsion of a motor car, it was for that purpose.

A. I think that is different from an electrical plant.

Q. In what way?

A. One for the purpose of producing electricity, and one for the convenience of the man who owns it.

Q. Do you recognize that an old power plant might be more obsolescent than one installed recently, with new equipment throughout?

A. No, I can't say that you're going to gain a thing. In this plant you actually replaced one of those generators three years ago, and that new generator doesn't produce [442] any better or more kilowatt hours than the old one forty years old.

Q. No, and your automobile engine that was produced forty years ago, that would produce forty horsepower, doesn't produce less power than a forty horsepower motor produced for the same purpose today?

A. That is quite true, but I don't see the analogy between the electric plant and the automobile.

Q. Mr. Tinling, you have appraised hydro-electric plants heretofore, haven't you?

A. Yes, sir.

(Testimony of Hugh B. Tinling.)

Q. Have you appraised those in each instance on the basis of replacement cost without any deductions for obsolescence or for the wear and tear on them?

A. Your wear and tear, Mr. Ramsey, can be covered by insurance from any number of reputable concerns.

Q. You're not selling the insurance, Mr. Tinling, and I wish you would answer the question as it was given to you, direct.

A. Will you repeat the question?

(Whereupon the reporter read the last previous question.)

A. We have appraised on the basis of replacement cost, and we have not, I am speaking of the firm, have not made any allowance for depreciation and obsolescence. We left [443] that up to the owner of the plant to determine that.

Q. Did you appraise those for the purpose of determining what the sale or purchase value of that unit would be?

A. No, we have appraised the replacement value only, Mr. Ramsey. In other words, we have not carried the appraisal through to the point where the owner is presenting his figures to determine what he's asking as the value of the plant.

Q. Well, now, Mr. Tinling, as a matter of fact, and as an electrical engineer, you do recognize the fact that in placing value upon generating equipment or plants or pumping plants, that in fixing the value, the fair value, of those things, that it is uni-

(Testimony of Hugh B. Tinling.)

formly recognized that the depreciation and the obsolescence are items which operate to depreciate the original or replacement cost value of those things, don't you?

A. Those values are set at various amounts, of course, by various authorities, and depending on the use and application of them.

Q. Suppose that plant out there, instead of being forty years old, was a hundred years old, would you still say that the value of that property was what it would cost to replace it?

A. Yes, if it was producing the same amount of power as it would produce if you put in the new equipment to replace [444] it, yes, it is worth that much to the owner.

Q. So you refuse to consider at all the factor of obsolescence?—

A. No, I didn't say that.

Q. —Of the equipment and machinery, and depreciation?—

A. No.

Q. —In the machinery and equipment?

A. No, I simply would say on the amounts—

Q. Well, you've allowed no amount, have you?

A. That's right; I claim there is none on those machines.

Q. And there is one of those generators down there that is at least forty years old?

A. No, it is not quite forty; between thirty-five and forty.

Q. And to your mind that generator is worth as much as if it was a brand new one today?

(Testimony of Hugh B. Tinling.)

A. It is worth that much to the owner.

Q. It isn't a question of the owner. We're dealing with the sales value of it; someone is attempting to sell that now, what that is worth for the purpose of sale.

A. That individual generator, or the hydro-electric plant as a whole?

Q. The whole thing.

A. Then it is worth just as much as it ever was.
Mr. Ramsey: I think that's all.

Mr. Powell: May I call Mr. Tinling later on the tabulation?

The Court: Yes, if you have something else, you can call him later.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Ramsey: If the Court please, before Mr. Hall's testimony begins I wish to move to strike all of the testimony of the witness Mr. Tinling upon the ground and for the reason that the testimony is not predicated upon replacement value less depreciation and obsolescence, but entirely on replacement cost value without any consideration whatever being given to obsolescence or depreciation.

The Court: The motion will be denied. Exception allowed. You were through with the testimony in reference to this Exhibit 9, were you, Mr. Powell?

Mr. Powell: Yes, your Honor.

The Court: Will you pass those copies to the bailiff, please, and return them to Mr. Powell? He may have use for them again.

GERALD D. HALL

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Mr. Powell: We have a publication, your Honor, from the United States Geological Survey showing the gauge readings at Trinidad, which we would like to offer in [446] evidence as defendant's Exhibit 10. It consists of seven sheets from 1940 to a part of 1946 inclusive, just showing the readings at the Trinidad Station.

(Whereupon, compilation of gauge readings at Trinidad Station was marked Defendant's Exhibit No. 10 for identification.)

The Court: Can you stipulate or show how far Trinidad is from your power plant?

Mr. Powell: Yes, your Honor, Mr. Hall I believe can give us that.

The Court: Is there any objection to this exhibit?

Mr. Ramsey: I assume this is going to be identified by your witness now on the stand?

Mr. Powell: Yes.

The Court: It hasn't been identified; perhaps you had better identify it and offer it in the regular way.

Mr. Ramsey: I don't think there will be any objection.

The Court: I think, though, for the record it should be identified and show how far it is from the pumping plant, or the power plant, of the defendant, so the one who reads this record will know.

(Testimony of Gerald D. Hall.)

Direct Examination

By Mr. Powell:

Q. Your name is G. D. Hall? A. Yes, sir.

Q. Where do you live, Mr. Hall?

A. Yakima.

Q. How long have you lived in Yakima?

A. Twenty-five years.

Q. And what do you do?

A. I do private engineering work.

Q. Where is your office?

A. Larson Building.

Q. And are you a member of the Society of Civil Engineers? A. Yes, sir.

Q. Licensed in the State of Washington?

A. Yes, sir.

Q. In any other states?

A. Oregon and Idaho.

Q. Oregon and Idaho? A. Right.

Q. How long have you been engaged in engineering work? A. About thirty years.

Q. Did you at any time work for any agencies that did engineering work? Were you employed by the Reclamation Bureau at one time?

A. That's right; approximately five years.

Q. When was that?

A. '14 to '18; 1914 to '18.

Q. And what work did you do after that? [448]

A. Highway work and irrigation work for other irrigation systems.

(Testimony of Gerald D. Hall.)

Q. Have you been employed by or have you done consulting work in connection with excavation and structures, computing quantities and values?

A. I have, yes.

Q. Just detail, if you will, some of those employments, Mr. Hall?

A. The tunnels and replacement of part of the main canal on the Naches-Selah Irrigation System; an extension to the Sunnyside project; improvement of the main canal, Union Gap Irrigation District; the pumping plants and distribution systems of the Outlook Irrigation District, Snites Mountain, and the Grandview Irrigation District; done some other work in the Spokane area; not as much there as in this area.

Q. And were you employed by the Priest Rapids Irrigation District?

A. Yes, beginning in 1938.

Q. In 1938? A. Yes.

Q. What work did you do at that time for the Priest Rapids Irrigation District?

A. At that time an application was prepared to be submitted to the Public Works Administration for a loan and grant [449] to complete the distribution system and increase the pumping capacity for irrigation, and increase generation to provide power for pumping water for sale.

Q. Where did you start your work at that time?

A. Our first investigation was the power plant and the power canal.

(Testimony of Gerald D. Hall.)

Q. And what kind of work did you do?

A. The first step was to determine the volume of water that would be needed at minimum flow in the river to obtain maximum generation. We ran tests on the generators, measured the quantity of water they were using, then surveyed the power canal to see how much enlargement would be necessary to bring that water down at low water in the Columbia.

Q. And you say you surveyed the canal. How did you survey the canal?

A. Cross sections and profiles.

Q. Now, what part of the canal did you survey?

A. All of it.

Q. Did that include the bottom of the canal?

A. Yes.

Q. Did it have water in it? A. Yes.

Q. And you surveyed it while the plant was in operation? A. Right. [450]

Q. What did you find the condition of the canal to be, Mr. Hall?

A. No improvement was needed in the first three thousand feet above the power plant. Our survey started at the power plant. At about 3500 feet above the power plant there was an obstruction in the canal, where a rock projection was not removed, caused considerable head loss. From that section up some improvement was necessary to the spillway.

Q. How far is the spillway above the power house?

(Testimony of Gerald D. Hall.)

A. It is 5400 feet above that, at the center. From there on up the old natural channel had been partly improved, but the bulk of improvements were to be from this spillway at 5400 feet up to the river, at the head of the rapids, which was 10,400 feet above the power house, leaving 5000 feet of the canal to have the major part of the improvements.

Q. That is the upper half of the canal?

A. Yes.

Q. Had the major improvements, is that right?

A. The greater percentage of the work to be done had to be done in that section.

Q. Is there a direct relationship between the water in the river as the canal is now constructed and the amount of power developed there? [451]

A. Yes.

Q. Now, where is Trinidad?

A. I can't give you the exact distance; it is about fifty miles up river from the power house. It is by highway twenty miles south of Wenatchee, and the highway roughly parallels the river.

Q. Is there a gauging station there?

A. Yes, there is.

Q. Who operates that gauging station?

A. United States Geological Survey.

Q. And are there readings, if you know, made there?

A. There's not only readings, but there is a continuous record made of the stage in the river by a recorder. The record is on a chart.

(Testimony of Gerald D. Hall.)

Q. And what is the condition as to whether there is any inflow below that?

A. Practically none, excepting during flash floods.

Q. What other streams run into the river below Trinidad and above Priest Rapids?

A. The only well defined is Crab Creek. That comes in from the east, and there is seldom any flow.

Q. Now, Mr. Hall, I hand you defendant's identification 10, and will ask you if you know what it is?

A. This is a summary of the data taken by the United States Geological Survey showing the gauge heights and discharge in second feet at Trinidad for the year 1940 and from there to part of '46.

Mr. Powell: We offer identification 10, your Honor.

Mr. Ramsey: No objection.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit No. 10 for identification was admitted in evidence.)

The Court: The court will take a recess now for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

GERALD D. HALL

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. How long did you take, or did you say, in surveying the power canal, Mr. Hall?

A. The actual field survey took the party about a week. The observations of the gauges to check the water surface elevations were carried over two years of low water periods.

Q. Two years of low water periods?

A. Uh huh.

Q. How much of your time did you spend there during the time [453] the survey party was there?

A. I can't recall; probably half the time.

Q. And how many times were you there during the low water periods to make these observations?

A. I was there on an average of every ten days or two weeks, but the records were kept and the observations made in the meantime by Mr. Grell, who was then chief operator.

Q. And as a result of those studies was any canal work done on the power canal? A. Yes.

Q. What work was done?

A. Some obstructions were removed in the neighborhood of the spillway and slightly above there, but the canal was completed in accordance with the final plan we adopted down 2000 feet from the in-

(Testimony of Gerald D. Hall.)

take, or below the intake at the head of the rapids.

Q. And when was that work done?

A. 1940, I think; I'd have to refer to the contract. It was done in the fall of '40 and completed in the spring of '41.

Q. What did that work consist of?

A. Opening an additional channel from the river into the improved channel, and enlarging the old entrance from the river in the junction of those two channels, which formed a "Y". The canal was widened to the planned width I think 600 feet or 500 feet below that point, so we [454] could have full completion that far down from the river. One of the reasons for that was that earth for dams across the canal was too far away at the head of the rapids. We wanted to get down where it was readily available for continuing the improvements. You could then put in a small earth dam for \$100.00 or \$125.00.

Q. What was the earth dam for in the canal?

A. That was to close the river off and work in the canal.

Q. And do work in it with no water in it?

A. That's right.

Q. When you mentioned obstructions, what kind of obstructions were they?

A. There were some rock points and small reefs in the bottom of the canal that had to be removed to have a canal section that would conform to the size we wished.

(Testimony of Gerald D. Hall.)

Q. The jury was out there Monday afternoon, Mr. Hall, and went up to the intake of the power canal. Where is this new channel that you say was cut through?

A. The junction is about 1900 feet down from the end of the old canal. From there the channel projects northeasterly to the river,

Q. Is there a crib dam there?

A. Yes, just below the new side channel.

Q. Below the what?

A. Below the new entrance, across a narrow side channel of [455] the rapids.

Q. And about how long is that dam?

A. I've forgotten the length of it, but as I recollect it was about 300 feet.

Q. Did you inspect it while you were there?

A. Yes.

Q. What was the condition of it?

A. It was in good condition excepting the east end had been washed out.

Q. Which end would that be as to the——

A. That would be away from the power canal.

Q. Is it at right angles to the stream?

A. Yes, very close to it.

Q. And what was the purpose of the dam?

A. It was to raise the water level in this side channel of the rapids to provide more head for the power canal.

Q. Approximately how high is it?

A. The deepest point, it is about twelve feet.

Q. That is the dam?

(Testimony of Gerald D. Hall.)

A. Yes; you see, that is a relatively shallow side channel.

Q. And was enough of the dam exposed so you could actually see the——

A. Oh, yes, you could walk across it.

Q. Are there timbers there? A. Yes. [456]

Q. And how was it constructed?

A. Timber cribbing, timber set on each other and then cross timbers in between, dowel pins down through the timbers to hold them together, and then filled with rock. We worked a tractor across the top of it to repair the east end.

Q. And does it show the effects of wear and damage, except the east end?

A. No, it was in very good condition.

Q. How wide was this new channel that was cut through from the river to the canal?

A. 100 feet on the bottom.

Q. And what result was obtained by cutting this new channel?

A. I've forgotten the exact increase in generation. It improved the generation, and it would not be fully effective and will not be until the enlargement of the channel is continued down to a point about 3100 feet above the power house.

Q. And was that work all included in that plan? I mean, was the improvement you're discussing now all included in the studies that you made?

A. Yes.

Q. Why do the obstructions down that far in the canal affect the flow of water in the canal?

(Testimony of Gerald D. Hall.)

A. The channel is narrower and shallower than it should be, [457] and there isn't enough fall unless that canal is opened up for the full capacity of the completed part above to go through.

Q. For the full what?

A. For the full capacity of the completed part above to go through the lower channel.

Q. You get more water above than can be taken by the lower channel?

A. You can; if the obstructions are removed the capacity will be as planned.

Q. Did you make a study of the amount of water that could be obtained by this enlargement, at low water stages?

A. Yes; we had in addition to the gauges in the canal a gauge in the river at the rapids, other gauges at the power house and below the power house, so we read all gauges simultaneous and correlated the gauge heights and river flow at Trinidad with the elevations we had at the canal. From that we established the depth of the canal and the other requirements in point.

Q. You say you correlated the information?

A. Yes.

Q. What did that show?

A. It shows that when the river flow was between thirty and thirty-five thousand second feet at Trinidad, a five thousand second foot increase will raise the water one [458] foot at Trinidad and four-tenths of a foot at Priest Rapids, at the head of the rapids.

(Testimony of Gerald D. Hall.)

Q. And what effect would that have on the power canal?

A. Well, the effect would be to establish your elevation so that you could obtain the required flow at low water in the river, required flow in the power canal.

Q. The effect would be what?

A. Establish the elevations you would have to use to obtain the required flow in the power canal at low flow in the Columbia.

Q. Now, just what is the effect on the power plant of the change in elevation of the river?

A. Well, that depends on the stage, under the present conditions.

Q. Well, may I state it this way. What is the difference in power production at the power plant between the time the river is at high stage and the time it is at low stage?

A. I don't have those records with me. You see, we have a partially completed condition, and we have taken records on that, but I don't have the detail of that with me.

Q. Well, there is a difference in the head obtained at the power house, isn't there?

A. Oh, yes; we have maximum head at low water in the Columbia.

Q. What is head?

A. The maximum head is, I think the extreme observed there [459] is 27 feet. That would be the difference in elevation between the water surface in

(Testimony of Gerald D. Hall.)

the power canal and the water surface immediately below the power house, where the turbines discharge.

Q. That is the definition of the term "head"; the difference in elevation between the two?

A. Through that power house, yes.

Q. What quantity of water is necessary to operate both generators at capacity?

A. If number 1 were not replaced, we had planned to replace number 1 because of the need for added power of the district, added power to improve sales, you need 1860 second feet at 25 feet head. We had planned more capacity than that for other reasons.

Q. And what were those other reasons?

A. One reason was to maintain a continuous waste at the spillway to sluice out sand that travels along the bottom of the river under certain conditions. The other was to provide the same sluiceway condition to a less degree at the power house; one continuous waste to sluice out the sand, the other as a sluiceway to waste grit into the river, or ice.

Q. What capacity did you then figure on getting in the canal?

A. We planned on 2200 second feet at the power house, 2700 feet down to the spillway. [460]

Q. Now, Mr. Hall, from your studies, is it possible to get that amount of water in the canal at the powerhouse at low water? A. Yes.

(Testimony of Gerald D. Hall.)

Q. And how would that be done?

A. We knew definitely the elevations with respect to the flow at the entrance to the canal. The only question from that point on would be whether the water in the Columbia would ever drop below 24,000, I think it is, second feet.

Q. Speak a little louder.

A. The only hazard, you might call it, would be whether the flow in the Columbia would drop below 24,000, say 300 second feet. Our belief that it would not drop is the agreement between Puget Sound Power and Light and the Bureau of Reclamation. The Reclamation guaranteed to them that their operation of Grand Coulee Dam would not be such as to make their flow less than the previous minimum flow of the Columbia.

Q. And what was that?

A. 24,000 plus. I don't recall the exact figure; slightly over 24,000 second feet.

Q. The Puget Sound is located where?

A. The power plant is about twelve miles south of Wenatchee, along the river, and probably eight or nine miles above [461] this Trinidad Gauging Station.

Q. That is the Rock Island Dam?

A. That is the Rock Island Dam.

Q. And were your computations based on what you could do at a 24,000 second foot flow?

A. Yes, sir.

(Testimony of Gerald D. Hall.)

Q. And could you detail, Mr. Hall, what work would be necessary on this canal to secure the volume of water at the power house that you have described?

Mr. Ramsey: Just a minute. If the Court please, I am going to object to this line of testimony as being purely speculative. Here is a general plan made in 1938, not carried through and completed in 1943, and it seems to me moving into the realm of pure speculation when we start talking of enlarging the capacity of the plant on plans made five years before the government took over the plant, and using that as a basis for determining the prospective productive power of the generating plant.

The Court: I think I'll have the jury step out just a minute, and we can discuss this.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: All right, I would like to hear from you, Mr. Powell, as to what your purpose is here of this [462] testimony.

Mr. Powell: The purpose, if your Honor please, my understanding of the testimony is that the examinations were started in 1938 and the studies completed and part of the work done in 1940, and I assume that therefore part of the work would be done during low water stages in 1941, which was the time the war started, and the prices started to

(Testimony of Gerald D. Hall.)

go up, which of course naturally would change all conditions as far as the District and that improvement were concerned. Since the plans had been made and the work had been started and partially completed, we feel it is not speculative at all, but is part of a general plan of improvement that we're entitled to take into consideration in determining what a buyer, ready, able and willing to buy, fully informed, would take into consideration, that if the work were done 3500 feet or so below the intake, but other work to be done below that, the work already done would not be of full value until the other work were completed, and the purpose of the work being to get a full head of water at the power house at low stages of the river, which could not be obtained in the present condition of the power canal; and we will show later on, if your Honor please, the power production of the plant in '42, as showing the decline of power production during low water and the increase of power production during high water, and this testimony will show that it is possible to bring the power production up during the low water period, when there is plenty of water in the river but not enough water in the canal to operate at capacity, but with this work done it would be operated at capacity and increase the power production during that time of the season.

Mr. Ramsey: I think, if the Court please, that we must keep in mind all the testimony that's been adduced at the present time on this matter. The fact that in 1938 the Priest Rapids Irrigation Dis-

(Testimony of Gerald D. Hall.)

trict had made application for a government loan in the amount of more than \$400,000.00 for the rehabilitation of the District, its power plant and all the facilities of the District, which they never received. It is all very well to talk about a survey, and plans for improvement, but I think we should recognize and must recognize that carrying out that plan was dependent upon receiving a grant of Federal money, or being able to borrow under the guarantee of the government, a very large sum of money for a very small District, and that it never went through.

Mr. Cheadle: I dislike interrupting Mr. Ramsey, but he has not put in any evidence of that, if he is stating that the government is going to offer proof of that application for loan, and the date of it, and so on—— [464]

The Court: This witness testified, as I recall, that an application was made for a WPA grant——

Mr. Ramsey: PWA.

The Court: ——and loan in 1938, and I understood this survey was in connection with that application. It hasn't been shown by his testimony or any other that the loan had been allowed or granted.

Mr. Ramsey: If I recall correctly, I think there was some testimony on the part of the Chairman of the Board, also, that is, Mr. Salvini, about those plans in connection with the granting of the option on all of their lands to the Priest Rapids Development Company. I submit to the Court that we should not permit some of these plans that never matured to serve as a basis for opening up a very

(Testimony of Gerald D. Hall.)

wide field here. We're now confronted, if we go into this thing, with the proposition of inquiring into the cost of carrying through this proposed or projected plan of development, an inquiry into the amount that the generating capacity of the plant would be added thereby, and a sort of comparison for the purpose of determining whether the cost involved was so large as to make the thing not at all attractive. If we're going to take the position of a prospective buyer, all of those things would enter into his consideration of the situation; how much money he would have to put out, what the [465] results would be if he did put that out—we're opening up a very, very wide field, and I submit to the Court that it is speculative, purely and simply.

The Court: Have you anything further?

Mr. Powell: I don't see that we're opening a very wide field. We're limiting this to the investigation made from 1938 to 1940, and the improvement partially completed in 1940 before the war started.

The Court: Well, I think you should be permitted to show the history of this project down there, and show, if you care to, what improvements have been made and the extent to which they were actually completed prior to the time the government took over the property, but I don't believe it is proper to go into speculation as to what improvements could be made or might have been made in the future, had some plan been carried out. It is conceivable that a dam might be thrown all the way

(Testimony of Gerald D. Hall.)

across the Columbia River, I think there's some talk of that, and you could develop a plant comparable to Bonneville, but surely we can't go into that.

We have to take that plant as it existed up to the time the government took it over and to that extent the evidence will be admitted, but not speculating what might have been done sometime in the indefinite future.

Mr. Powell: I don't have it ready now, your Honor, we did not anticipate that we would be precluded from presenting evidence concerning a proposed clean-out of the channel, which is what it amounts to, of the power plant, and therefore we would like to have an opportunity to make an offer of proof on that subject.

The Court: I think you have. Testimony has gone in without objection, has it not, that you improved a part of the power canal channel, and that it will be necessary to enlarge the rest of it to get the full flow through the lower end of the canal. What else do you propose to prove, that you were going to do that in the future if you got a grant of money?

Mr. Powell: That it could be done at a nominal cost, or the reasonable cost that Mr. Hall made a study of.

The Court: Then we would have to let the government come in and show it couldn't be done at a reasonable cost. They could send their engineers down there and make a study. That it seems to me is going a little too far afield. I think I should limit

(Testimony of Gerald D. Hall.)

you to the plant as it stood, with the improvements that were made up to the time of the taking by the government; and you may make an offer of proof, of course, if you wish, in the absence of the jury, here, if you care to do so now.

Mr. Powell: Shall I state the offer of proof now, [467] your Honor?

The Court: Yes, if you're ready.

Mr. Powell: We offer to prove by this witness that starting in 1938 he made a study of the power canal and a survey of the power canal and planned canal improvements to be made, and that they were made in part in the year of 1940; that they were not completed at that time but that they could be completed at a cost of \$30,000.00, that they could have been completed at that time at a cost of \$30,000.00, which would have increased the flow of water at the power house by sufficient to produce maximum generation of power during the low water stages of the river, and that the improvements have not been made because of the fact that it was not possible to do the work after the low water stage in 1940 because of the intervention of the war in the fall, in December, of 1941; and if I may add this to the offer, if your Honor please, it is our theory that in view of the fact that this was within the contemplation of the sellers, and part of the work had been done, but by reason of the fact that part of it had been done, the maximum use or value of the work that had been done could not be realized until it was

(Testimony of Gerald D. Hall.)

completed, and that it would be information that a well informed buyer would want to secure or would want to have in order to make the purchase of the power plant and the power canal property.

The Court: Mr. Ramsey?

Mr. Ramsey: Objected to, if the Court please, for the reasons already stated.

The Court: Objection will be sustained. Exception allowed to the defendants. Call in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

Direct Examination

(Continued)

By Mr. Powell:

Q. What, if any, improvement work had been done at the spillway, Mr. Hall?

A. There had been a concrete wall installed, I think three or four years before that, and some openings left for stop log control of the flow of water.

Q. For what?

A. For control of the flow of water by stop-logs in through these openings. We did not do any work in the spillway section proper in 1940 or 1941.

Q. What was the purpose of this spillway?

A. Originally it was to provide a sluice-way for the upper section of the canal and to control elevation during low water, but after the conditions were changed, then the top of the concrete wall was much

(Testimony of Gerald D. Hall.)

higher than the elevation in the canal at low water, so only the sluice-way [469] section was then used.

Q. And when is the spillway actually in operation?

A. I couldn't answer that; it is—I think it would run over the wall when the river flow was up to around seventy or eighty thousand second feet; it would run over the wall automatically.

Q. When the flow of the river gets up to seventy or eighty thousand second feet?

A. That is as I recall it.

Q. And the purpose of it is to do what, besides act as a sluice-way for sand?

A. It flows below that. You would lose water through the opening if the spillway wall were not there under the old conditions, but when we deepened the canal the spillway then was not as effective as it had been previously.

Q. Well, during extreme high water what happened at the spillway?

A. Terrific waste at the spillway.

Q. Lots of water goes over the spillway. How high does the water get at the power house at that time?

A. I think the fore-bay elevation is 495. I don't find that here, quickly. That's above the power house, against the river elevation of 496, 997, at the rapids, and then during those periods the net head through the power plant is reduced because of the——[470]

(Testimony of Gerald D. Hall.)

Q. I don't need that figure, Mr. Hall, except that I wondered if you could tell us how far the water gets up on the upper side of the power house.

A. About six feet below the floor.

Q. About six feet below the floor?

A. Below the main floor.

Q. And when it gets up to that point does it back up the canal? A. Oh, yes.

Q. And runs out the spillway?

A. Considerable flow through the spillway.

Q. You say at that time the net head is reduced? A. Yes.

Q. Why is that?

A. Because the water at the foot of the rapids rise more in proportion than it does at the head.

Q. Why does it rise more at the foot than it does at the head of the rapids?

A. Difference in channel conditions of the river.

Q. Wider above than below?

A. I think the channel condition is different at the head, causing it to be shallow and wide. We have never taken channel survey readings. We had gauges in there, and read them simultaneously to see what the effect was, and eight-tenths of a foot at the head of the rapids, as I [471] recall it, this only applies to certain stages, would create a difference of four feet at the power house.

Q. Did you make an investigation at any time of the irrigation district, properties of the district, Mr. Hall? A. Yes.

(Testimony of Gerald D. Hall.)

Q. You were, I believe, with Mr. Tinling when he made his investigations? A. I was.

Q. And did you help him inventory any of the property?

A. On part of the electrical, yes. I worked on the other parts of the property principally.

Q. When did you make your investigation of the properties for inventory purposes?

A. I don't remember the exact month.

Q. In the year of 1943?

A. Yes; I think it was in April.

Q. And what did your investigation consist of?

A. Valuation of all properties, and my phase of the work was the canals and powerhouses, that type of construction; Mr. Tinling was electric.

Q. Mr. Tinling's was the electrical, and yours was the excavations and the structures?

A. Yes.

(Whereupon, Cost of Reproduction New, Canals and Structures, by G. D. Hall, was marked Defendant's Exhibit No. 11 for identification.)

Q. Mr. Hall, I hand you Defendant's identification 11, and will ask you to examine it, if you will, please.

The Court: What was the last question?

(Whereupon, the reporter read the last previous question.)

(Testimony of Gerald D. Hall.)

The Court: Hasn't he had time enough now to examine it and tell what it is? Let's get ahead with this.

Q. Yes, your Honor; I'm sorry.

A. This is a tabulation of the appraisals of the power canal, generating plant structures, Coyote Pumping Station structures, main irrigation canal, and the lateral system.

Q. Are the items that refer to the power canal and the generating plant stated separately from the pumping plant and the irrigation system?

A. They are.

Q. You have an item on page 2, Mr. Hall, of engineering and legal expense, 8 per cent?

A. Right.

Q. That has not been segregated, however, has is, or divided between the two different items?

A. It would have to be divided out separately for each item [473] if you wished to distribute it that way.

Q. What is the—rather, do the items, Mr. Hall, include the power canal and the generating plant structures? A. Yes.

Q. And are the quantities shown?

A. Quantities of excavation, concrete, reinforcing, other items are shown.

Q. And how did you arrive at the quantities?

A. The quantities of excavation are from the surveys taken for that job.

Q. And were there definite examinations of the quantities of concrete in the power plant?

A. Yes.

(Testimony of Gerald D. Hall.)

Q. And does that same thing apply to the pumping station?

A. Yes, the same method was used.

Q. How do you arrive at those quantities?

A. We use the original plans, check them by field measurements, and then computed the quantities in the same manner as you would for a contract.

Q. Does the same thing apply to the excavation of the main canal and the lateral system?

A. It does.

Q. Did you make the computation, Mr. Hall?

A. I checked them.

Q. Pardon. [474]

A. I checked them.

Q. Were they made under your supervision?

A. Yes.

Mr. Powell: We offer the identification in evidence, your Honor.

Mr. Ramsey: Objected to, if the Court please, for the same reasons urged in objecting to the introduction of Exhibit 9.

The Court: Objection will be overruled. Admitted.

Mr. Ramsey: Exception, please.

The Court: Exception is allowed.

(Whereupon, Defendant's Exhibit No. 11 for identification was admitted in evidence.)

Mr. Powell: I wonder if the Court would want the original?

The Court: No, that isn't necessary.

(Testimony of Gerald D. Hall.)

Mr. Powell: These are not photostatic copies; they are copies, however, which have been proofed.

The Court: If you're short of copies I can use the original and let you have this one.

Mr. Powell: No, there are thirteen here.

(Whereupon, the Clerk distributed copies of Defendant's Exhibit No. 11 to the jury and one alternate juror.)

Mr. Ramsey: May the record show that the government makes the same objection to the furnishing of copies of Exhibit 11 to the members of the jury as was made to the furnishing of copies of Exhibit 9 to the jury.

The Court: Yes, that may be shown. Objection is overruled and exception is allowed.

Mr. Powell: I understand that counsel is not objecting because they are copies?

Mr. Ramsey: No, there is no objection on that ground.

Direct Examination
(Continued)

Q. Now, Mr. Hall, referring to Defendant's Exhibit 11, on page 1 appears the power canal, is that correct? A. Right.

Q. And can you describe the method that you followed to arrive at the amount of excavation in the power canal?

A. We used our survey to compute the quantities for both the old canal and the proposed new quantities in excavating the upper end. We then

(Testimony of Gerald D. Hall.)

used the original records to check our computation of quantities in the old canal. Now, some of the work they did was washed away in later years. We had to make an allowance for that, so the quantity shown is less than that shown by original records.

Q. The quantity is what?

A. The quantity shown for the old canal is less than will be shown in the original records, the quantity shown here. [476]

Q. I see. And where did you get your unit price, Mr. Hall?

A. The lower end of the canal is taken partly from original records and partly from current bid prices. Most of the material in that section had to be loaded with a shovel and hauled out to the upper end, so the cost would be a little higher. However, being gravel, there wasn't so much drilling and shooting, blasting of material. I believe that unit price represented a good cross section of current bid prices for similar work at that time.

Q. At what time?

A. At the time of the appraisal.

Q. And why is there a difference between the original and subsequent excavation?

A. Because the work could be done better with machines upon the upper section, and we had actual bid prices, we used the actual bid prices for that part of the yardage shown.

Q. You used the bid prices for that portion?

A. That's right.

(Testimony of Gerald D. Hall.)

Q. You didn't do any work in 1943, did you?

A. No, in 1940 and 1941.

Q. You took the bid prices of 1940 and 1941 and applied them to the 1943 appraisal?

A. That's right.

Q. They actually were much lower than they were in 1943?

A. Yes, prices had begun to increase then. [477]

Q. So you have actually taken a much lower price than the price would have been in 1943?

A. The upper section I think the cost would have gone up in 1943; well, I think it would be lower, too, but here we used the actual cost prices and actual bid prices.

Q. And you have an item of spillway structure and crib dam? A. Yes.

Q. And what then was your computation of the—by the way, Mr. Hall, what do these figures represent, a depreciated value or a new value as of 1943?

A. Well, the cost of reproduction new, or in equal condition.

Q. Or what?

A. Or in equal condition; the cost of reproduction in kind at that time.

Q. I think, Mr. Hall, you have two confusing terms, or two different terms there. The cost of reproduction new would be different than the reproduction in kind, wouldn't it?

A. That's right; if it is an excavation that hasn't deteriorated because of the sloughing of the

(Testimony of Gerald D. Hall.)

banks, and the channel is the same, the cost of reproduction would be equal without depreciation; there is no depreciation in that item. If it were concrete structure or pipe line, the appraisal is made on the basis of reproduction of actual physical kind, which I have termed reproduction in kind.

Q. Then your designation of cost of reproduction new is not entirely correct?

A. That's right.

Mr. Ramsey: May the record show, in the light of the explanation of the witness as to the basis of his appraisal, that the government interposes the same objection to the testimony of the witness as to reproduction cost, not plus depreciation, as it interposed at the introduction of the testimony of the preceding witness.

The Court: Yes, the record may show that, and the objection is overruled.

Mr. Powell: May I make this statement, so there will be no confusion? We are not claiming that the reproduction cost new is the sole element of value. It is merely one of the elements that would be taken into consideration by an informed buyer and an informed seller.

The Court: That is the purpose for which it is admitted.

Mr. Powell: Just as one of the elements to show value.

(Testimony of Gerald D. Hall.)

Direct Examination

(Continued)

Q. Now, what is the total value, Mr. Hall, as of 1943, of the power canal and the spillway and crib dam?

A. \$141,840, without the addition of 8 per cent for engineering and legal, which should be added to get your total cost for that item.

Q. And is there any depreciation, Mr. Hall, on an excavation of that kind?

A. Not in this particular instance, because when the canal was de-watered for work in 1940 and 1941 we found the original excavation was very nearly as it was left. In other words, your canal section had not changed much by usage.

Q. Now, what about the next item of generating plant structures?

A. Structure excavation is based upon prices at that time, and the plant, I might say, is set in rock. The concrete is based upon the same current bid price that we use here, \$30.00; reinforcing, 6 cents per pound, was the current bid price. The other items are in line with that same practice, with the exception of these operators' residences, which we estimated from comparable cost on the basis of replacing them in kind. They needed considerable maintenance in the way of paint and other items. The total of those items, without the engineering and general expense, is \$138,900.00.

(Testimony of Gerald D. Hall.)

Q. I noticed, Mr. Hall, the two large items under that particular heading are the structure excavation and the concrete. Why are the unit prices so high? [480]

A. Not unit prices; you mean total price?

Q. No, the unit price of rock excavation, \$4.00 a yard.

A. In that location it is necessary to excavate some rock below the river. You would have to de-water that. Then too, they were cutting little benches in the bank as they went back up, on which to set the power plant. That type of rock excavation is more expensive than to blast a road cut, for example.

Q. And about the concrete, what is the condition of the concrete now, or was it in 1943?

A. It's in very good condition.

Q. Pardon?

A. It's in very good condition.

Q. Is the concrete structure—can you tell by your examination whether it is well made or—

A. Well, there are no cracks of any consequence in the structure, and then we had to drill holes through the floor to install a new governor, piping, and do other work, and we found the concrete to be very hard.

Q. Now, your next item, Mr. Hall, Coyote Pumping Station.

A. Structure excavation in that location is easier, there is less quantity below water, so we used the unit price of \$2.00, used the same unit

(Testimony of Gerald D. Hall.)

price for the concrete as we did at Priest Rapids; reinforcing steel, because of a difference in character, there were some special I-beams, [481] caused us to use a higher unit price; then there had been installed in the river a timber intake, and that price was based largely upon historical value. It, like the cribbing at Priest Rapids, is in good condition; it's been under water practically continuously.

Q. Could you see it?

A. You could at low water, but the top was still below water, piping under the lowest of low water. The discharge pipe item shown of \$4900.00 was a new pipe that was purchased and on the ground, ready to replace the old pipe. No credit was given for the old discharge pipe. The operators' residences was appraised in the same manner as before for the other residences. The total of those items in connection with that station is \$36,940.00, without the addition of overhead expense.

Q. Now, Mr. Hall, before we leave the Coyote Pumping Station structure, you have discharge pipe, \$4900.00. What kind of a discharge pipe was installed in the pumping station in 1943?

A. It was a wood stave pipe.

Q. We noticed the other day there was a concrete discharge pipe. That was installed later?

A. I wouldn't know about that.

Q. When you made the inventory what—

A. There was only the wood stave pipe in operation. [482]

(Testimony of Gerald D. Hall.)

Q. Do you remember the size of the wood stave pipe? A. 72 inches, as I recall.

Q. How many were there? A. One.

Q. One discharge pipe?

A. There was another one there that had been abandoned the previous year, but that wasn't taken into consideration, where it was not even connected to the pumping plant. It had been cut off just above it.

Q. Now, where was the operators' residence located?

A. It was on a little higher ground, about 250 or 300 feet west and 100 feet south of the plant.

Q. All right, the next item, Mr. Hall.

A. This is the main irrigation canal. Because most of the material in that area is earth and sand, to be excavated easily, and it could be side-cast with a shovel, there's a unit price of 15 cents. The loose rock and gravel prices were based on current bid prices. In fact, we had a bid price of almost that amount for some enlargement. The flume was appraised on the basis of the value of the material and the frame. Concrete, because it was lining that could be placed without forms, we used a lower unit price; spillway, gates and checks, a lump sum, in comparison with similar structures elsewhere. We had some current bid prices on gates and checks of that kind. [483] We used a lower sum because of the condition of the gates.

Q. Now, what concrete does that refer to?

A. Pardon?

(Testimony of Gerald D. Hall.)

Q. What concrete is referred to there under that heading?

A. There is a concrete transition at the outlet of the discharge pipe, or rather there was; I think it was about fifty feet long. There were also some transitions down near the points of diversion in the spillway.

Q. What do you mean by concrete transition, Mr. Hall?

A. In this case the channel was rectangular at the outlet of the pipe, and the walls turned from the vertical to follow the slope, the walls of the channel where they contacted the earth, or rather went from concrete to earth.

Q. That is, the transition being a change from a pipe line or flume to a ditch?

A. So that the one end, say the outlet end of the pipe, corresponds closely to the area and shape of the pipe, and the channel is gradually changed to conform to the shape of the ditch at the outlet end, in this case.

Q. Now, what have you included, if anything, for concrete lining of the canals? A. Nothing.

Q. Nothing. Now, the next item is what, Mr. Hall? [484] A. Lateral system.

Q. That is put in at a lump sum, is it?

A. Yes. The construction cost of the canal, the total cost, \$68,400.00, the total of the items just previously discussed, was \$68,400.00, then the lateral system is a separate item and a single item. That value is based solely upon the condition of the

(Testimony of Gerald D. Hall.)

distribution system as compared to current distribution system costs of the Bureau of Reclamation.

Q. Do they correspond to bid prices?

A. Yes; we estimated the condition of the lateral system to be about 20 per cent of the average cost according to their contracts at that time.

Q. What, then, Mr. Hall, was the total figure that you had for this, the reproduction cost of these items?

A. The total was construction cost, \$395,080.00; adding general expense of \$31,606.40 makes a grand total of \$426,686.40.

Q. Now, what about this item of engineering and overhead, Mr. Hall? Engineering, legal, and overhead, or whatever it is?

A. That represents the average cost for projects of this type and size. I might add there that in looking up the historical cost I find it is closer to 10 per cent, because there was a great deal of expense involved in [485] acquiring titles and other procedure of that kind, so that when you deduct that from the other expense the original constructors had to bear, it comes very close to this 8 per cent.

Q. You can prepare, can you, a sheet, Mr. Hall, dividing that item and applying part of it to the power house and power canal and part of it to the pumping plant and the irrigation canal?

A. Yes, I can.

Mr. Powell: May we ask leave to do that, your Honor?

(Testimony of Gerald D. Hall.)

The Court: Yes, if you will segregate the power plant structures from the irrigation works structures.

Mr. Powell: You don't need to do it now, Mr. Hall.

Witness: I have part of it broken down now.

The Court: Well, it isn't necessary to do it now. The court will adjourn now until 10 o'clock tomorrow morning. We got along faster today so we'll quit a little earlier. As you go out, members of the jury, before you leave the building leave your notebooks and the copies of the exhibit with the bailiff. The court will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, the court took a recess in this cause until Thursday, February 13, 1947, at 10 o'clock a.m. [486])

Yakima, Washington, February 13, 1947.

10 o'clock a.m.

(All parties present as before, and the trial was resumed.)

The Court: Now, gentlemen of the jury, a question has been raised about the discharge pipe at the pumping station of the defendant. I understand that when you went down to view the premises you saw a concrete discharge pipe there, about 36 inches in diameter; two concrete discharge pipes. The testimony of the witness Hall has been that

there was formerly a 72 inch wood discharge pipe. It has been stipulated and agreed by counsel for the parties here that I may tell you that the old discharge pipe has been replaced since the government took over the property, so that you are to consider this property as having a 72 inch wood discharge pipe rather than the concrete discharge pipes which you saw. Is that clear? You may proceed.

Mr. Powell: I do not believe we had concluded last evening.

The Court: I don't believe so; I think you were still examining this witness.

GERALD D. HALL

a witness called on behalf of the defendant, resumed the stand and testified further as follows: [488]

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Hall, the values that you, or the reproduction costs that you testified to, were they as of any particular date?

A. They were as of that date.

Q. As of the date you made them?

A. The date the valuation was made.

Q. Now, referring to the irrigation values, that is, the pumping plant and the discharge pipe and the main and lateral system, what changes would there be if you fix that value as of April 1, 1943?

(Testimony of Gerald D. Hall.)

A. None that I can recall. I was there just after the taking and there were no changes made then. There have been since.

Q. And the cost of reproduction that you testified to, then, would be the same on April 1 as your testimony has been; is that correct?

A. That is right.

Q. Now, that is April 1, 1943.

A. I think we made the appraisal in the middle of April or the latter part of April.

Q. There wasn't any change, then, between April 1 and the date you made the appraisal?

A. No.

Q. If you had to relate those figures back to April 1 would [489] there be any change?

A. None.

Q. Now, with reference to the power plant, your appraisal was made at the same time?

A. Right.

Q. And that was from data you had compiled previously?

A. It was compiled at the time of the appraisal.

Q. Now, what would be the difference in those cost figures, Mr. Hall, if you made your estimates of cost as of October 1, 1943, as to the power canal and the power house? A. None.

Q. And why is that?

A. There had been very little change in construction costs in that period; there had been no changes made at the power house or the canal by the government.

(Testimony of Gerald D. Hall.)

Q. So the figures you testified to, Mr. Hall, were, in your opinion, the cost of reproduction of the canal and power house structures as of October 1, 1943, also? A. That is correct.

Q. Now, is there any appreciable quantity of land at the power house?

A. I am not certain as to the exact area; I believe it is near 80 acres.

Q. And what about the land at the Coyote Pumping Plant? [490]

A. I couldn't testify as to the area.

Mr. Powell: I wonder, if your Honor please, if counsel would be willing that we have one of the tract maps that the government has prepared? They have surveyed this property, I understand, and can give us a tract map so the area can be shown.

The Court: At the pumping plant?

Mr. Powell: It is all on one declaration of taking. I think the map is attached to the original declaration of taking.

The Court: I think there is a map attached to the declaration of taking, if you have a copy of it, Mr. Ramsey, that you could spare.

Mr. Ramsey: I have a map here, if the Court please, of the power plant area. Possibly I have another map here too.

Mr. Powell: We can go on now, your Honor.

The Court: Yes, all right.

(Testimony of Gerald D. Hall.)

Direct Examination

(Continued)

Q. Do you know what head, or rather, how high a lift there was for the irrigation water at the pumping plant?

A. That varied with the stage of the river. As I recall it, it approached, or rather averaged between 50 and 60 feet, but you had a maximum variation of 25 feet.

Q. A maximum variation of 25 feet? [491]

A. Between low water and high water.

Q. Would that be—rather, what would be your best estimate, Mr. Hall, of the low stage, of the amount of the lift at low stage?

A. I don't have that data in mind. That 25 feet of variation is the average variation, and does not refer to extreme low and extreme high years; it is the average of 25 years of record.

Q. And what was the amount of water pumped there?

A. The time I tested the efficiency of the station they were pumping 78,000 gallons a minute.

Q. And can you give that to us in second feet?

A. I beg your pardon, that is an error. That is the second feet I gave you; they were pumping 78 second feet, instead of 78,000.

Q. I didn't get that answer.

A. That was an error. I should have said 78 second feet, instead of 78,000 gallons per minute.

Q. Per minute?

(Testimony of Gerald D. Hall.)

A. 78 second feet, instead of 78,000 gallons per minute.

Q. Did the quantity of water vary with the lift?

A. Yes.

Q. I mean the quantity of water that was pumped

A. That's right, it does; the less head—the pumps will discharge more water at less lift, I should say. [492]

Q. Now, what was the condition of the pumps when you made your tests?

A. You have reference to the efficiency?

Q. Yes.

A. The over-all efficiency at the head condition at the item we made the test was 51½ per cent.

Q. Of the pumps?

A. No, that means the total energy produced by the pump water as compared with the electrical input necessary to produce it, which includes the losses in the motor and shaft as well as in the pumps.

Q. What is ordinary—you don't get 100 per cent efficiency from a machine like that, do you, Mr. Hall?

A. No, sir.

Q. What is the ordinary percentage of efficiency?

A. We recently awarded some bids on a guaranteed efficiency of 72 per cent.

Q. And does that percentage of efficiency vary with the lift?

A. Yes; that is for one stated condition of lift?

(Testimony of Gerald D. Hall.)

Q. I see, and that would be the efficiency of new pumps, is that right? A. That is right.

Q. 72 per cent?

A. Pump and motor included.

Q. And in this particular instance when you ran your tests [493] they were 51 per cent?

A. 51½ per cent.

Q. Now, did you make any tests to determine the amount of water that was lost in the canal?

A. We tested two reaches, one about five miles in length, and the other three miles further down. The total loss in the two reaches was then two and a half second feet against a 78 second foot input, which would be slightly over 3 per cent.

Q. And what was the condition of the concrete lining of the canal?

A. The lining of the canal was badly broken. It had some value as seepage preventive, but not a great deal. The silting of the canal that has occurred through the years has been more effective than anything.

Q. And is that why the loss was low?

A. Yes.

Q. Do you consider that loss low, or high?

A. That loss was lower than average at that time, and it could have been higher further in the season.

Q. What time of the year did you make the test?

A. I'd have to go back to the test notes. I can't recall the month.

(Testimony of Gerald D. Hall.)

Q. Were you here present when Mr. Tinling testified yesterday? A. Yes. [494]

Mr. Powell: I have here, if your Honor please, the two tabulations that were mentioned, to segregate the power and the irrigation values. Before they're marked would your Honor like to see them?

The Court: Yes, please.

Mr. Powell: Do you have copies, Mr. Hall?

The Witness: Yes, I have.

The Court: Have you seen these, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

The Court: Well, you can mark them.

(Whereupon, summation of values was marked Defendant's Exhibit No. 12 for identification.)

(Whereupon, compilation of Exhibits 9 and 11 was marked Defendant's Exhibit No. 13 for identification.)

The Court: What the Court had in mind was simply a segregation of the values put on this property by the witnesses on the exhibits already put in evidence, for the convenience of the witnesses, so as to show separate totals for the pumping plant facilities and the power plant facilities. The second one, 13, it does not show on the face of it that it is a compilation of the figures contained in another exhibit. What is that exhibit, Mr. Hall's?

Mr. Powell: 13 is a compilation of both exhibits 9 and 11. It refers to both. The total figure at the bottom is the figure that was arrived at by adding both of the figures together.

(Testimony of Gerald D. Hall.)

The Court: Yes. Well, the thought that the court has in mind, these exhibits here are merely the testimony of the witnesses who have identified them and said that is the result of their findings and studies. This exhibit should not be just put in here as a list of figures, but should be tied down, it seems to me, to the particular witness who testified to this, so it will not be put to the jury as having any virtue of its own, apart from the testimony.

Mr. Powell: I might state that the word "Values" appearing on there does not mean it is the value. It is the evidence of the cost.

The Court: It is the evidence of the reproduction cost, which is only an element tending to prove market value; for that purpose, at any rate. You haven't offered that yet, have you?

Mr. Powell: No, but I'll be glad to have that——

The Court: Well, before you do that, perhaps you had better offer them and give Mr. Ramsey a chance to express his thoughts.

Direct Examination

(Continued)

Q. I hand you Defendant's identification 12, Mr. Hall. and [496] ask you if you know what it is?

A. This is a——

Q. Just say yes or no. A. Yes.

Q. What is it?

A. It is a segregation of the total values of the power plant facilities and irrigation features made by Mr. Tinling with relation to the electrical features.

(Testimony of Gerald D. Hall.)

Mr. Powell: We offer defendant's identification 12 in evidence.

Mr. Ramsey: Objected to, if the Court please, first upon the grounds that the figures represent reproduction cost without any deduction for depreciation, and that value cannot be shown on a reproduction cost basis without including as an element of that proof depreciation and submitting to the jury not the figure of reproduction cost alone, but the figure reached by deducting from that the depreciation. It is further objected to for the reason that the exhibits offered represent nothing more than a compilation of figures testified to, not only by this witness but by the preceding witness, and now submitted to the jury as a whole, that is, a compilation of the testimony of the two witnesses. Further objection is made that the exhibits present this to the jury as a total value of power generation [497] facilities and total value of irrigation facilities.

The Court: May I see that number again, please?

Mr. Powell: The originals, your Honor?

The Court: Yes. Well, the jury may step out just a minute, please. We'll try to get this settled as soon as we can.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Let's see, this one that is offered now is 13?

(Testimony of Gerald D. Hall.)

Mr. Powell: I offered 12, your Honor.

The Court: 12. I think that Mr. Ramsey has an objection there that should be considered, the matter of lumping the testimony of two different witnesses here and making a summary of the testimony of both. If we start out with that practice, every time we had a new witness you could put in a new summary and total everything up that's gone before, or average it. What the court had in mind, purely for the convenience of the jury and my convenience, under the theory the court has adopted here there must be separate findings of what we call irrigation assets and property and non-irrigation assets and property, that when these witnesses testify as to value there should be some segregation as between the pumping [498] plant and the irrigation works, and the power plant works. Otherwise it is going to be very confusing for the jury. It is difficult enough as it is. What I had in mind as to each of your exhibits here, if you could put in a separate exhibit or attach to the exhibit a summary showing the segregation, but derived wholly from the exhibit, and not mix up two or three exhibits, or the testimony of two or three witnesses, in the summary. I think it is something that could have been put in before the exhibit was offered. I think you can total and recapitulate in one of these exhibits. What I had in mind was to take up one of these exhibits here that represents the testimony of the witness as to value, and make your recapitulation, separating the power plant total from the pumping plant total. Is that clear?

(Testimony of Gerald D. Hall.)

Mr. Powell: Yes. I think from Mr. Hall's Exhibit, Number 11, that can be done by adding two totals for the power and two for the irrigation, and I think that is not necessary, if your Honor will look at it again; the total of both of them appears on the exhibit, but the sub-totals show the various items.

The Court: Well, let's see. Here's the power canal, that would be power, of course. Generating plant; pumping plant structures; irrigation canal. Well, here's the difficulty about this. He's got them separated here, [499] although I don't see any sub-total for your irrigation works. Under the irrigation here you have pumping plant structures, \$36,940.00; main irrigation canal, \$68,400.00; lateral system, \$9,000.00, and then you've got your engineering and legal item, representing 8 per cent of the grand total, that isn't segregated.

Mr. Powell: Let me withdraw these, then, your Honor please, and prepare them in shorter form.

The Court: I know the jury probably are not much better than I am at figures, and it would be quite a job for me to sit down and figure this out as to the different totals there. I think perhaps if you will withdraw these and have them prepared again in accordance with the court's idea, and Mr. Ramsey will have an opportunity, of course, to object again.

(Whereupon, Defendant's Identifications 12 and 13 were withdrawn.)

(Testimony of Gerald D. Hall.)

Mr. Ramsey: While the jury is out, in the matter of these maps counsel has inquired about, I am not sure I have anything here that would be proper. If the Court and counsel care to examine the maps I do have, I will be glad to submit them.

The Court: Well, I think all we're trying to do here is get a map you can both agree on, that will show the land involved in this action belonging to the District. Isn't that what you wanted to get?

Mr. Powell: Correct.

Mr. Ramsey: Well, in this map the entire area of the District is shown, for the reason that we took the rights of way of the District for canals, pipe lines, and what have you, throughout the entire area. At this point is shown land of the Priest Rapids Irrigation District at the power plant. Apparently the amount owned at the Coyote Rapids was so small that if anything, it represents nothing more than a red dot. Now, I do have another map which shows without coloring the land at the power site itself. I don't think that map is of very much value to you because it is so small at the point of ownership. It does not show much because at the center of the map it shows the entire district.

Mr. Powell: In these other cases, if your Honor please, the government had tract maps prepared showing the area and showing in a general way the total area, which could be computed in acres. I thought perhaps the government had a similar map in this case. We don't have any evidence here as to the amount of acreage owned by the District.

(Testimony of Gerald D. Hall.)

Mr. Ramsey: I think that will be shown by the declaration of taking and the petition. As a matter of fact, under this declaration of taking 99, it was a scattergun [500] proposition, and included in that was all of the right of ways for canals and ditches and pipe lines, and in preparing the map they colored the entire area embraced in the Priest Rapids Irrigation District, for the purpose of showing the area in which the rights of way were taken, so as an ownership map it is almost valueless. This particular map here does show the ownership data at the power plant, however, it is just a direct line enclosing the ownership.

The Court: I might say, I think I mentioned this before, I had in mind submitting the amended petition to the jury to take with them, but not the declaration of taking. It doesn't seem to me that is advisable in view of the fact an amount is stated in there as the estimated value of the property. I don't know just who that would favor; I haven't figured that out, but I will submit the amended petition, but there isn't any question about the acreage, is there, as set out in the petition?

Mr. Powell: I don't know that the acreage is given as to each tract. We can investigate that later. I don't want to take the court's time.

The Court: Yes, all right. Bring in the jury. Are you ready to proceed?

Mr. Powell: Yes. I thought perhaps, if your Honor please, rather than take the time of the Court and [501] jury, we can prepare these matters for

(Testimony of Gerald D. Hall.)

the jury, if we can agree, then we can present them without taking the court's time.

The Court: Yes; I think Mr. Ramsey would want to reserve his general objection, but he might be able to agree with you as to the form of the compilation totalling them.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

Mr. Powell: That is all, your Honor. You may cross examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Hall, with reference to the power plant structures, that structure is about 39 years old at the present time, is it not?

A. Just about, yes.

Q. That is true also of the pumping plant structure?

A. Yes.

Q. Both of these are concrete buildings?

A. That is correct.

Q. Now, what would you say is the normal life of a concrete building, that is, the normal useful life of a concrete building?

A. The oldest concrete structure that I know is 45 years old. [502] It is serving its purpose. You say useful life—you might mean obsolescence in there, Mr. Ramsey, but structurally this building that is 45 years old is sound.

(Testimony of Gerald D. Hall.)

Q. There is a depreciation from year to year, however, in concrete structures, is there not, a very determinable lifetime?

A. Depends on the type of structures. Certain types of canal lining deteriorate because of cracking and cross feeding; pumping plant structures, I know some others 30 odd years old that have not deteriorated.

Q. However, there is a depreciation from year to year in those structures?

A. Not a measurable depreciation or deterioration as in timber structures.

Q. Well, you say not a measurable depreciation. Would you consider that you might confidently count on a concrete structure being in a usable condition 100 years after it was built?

A. I have seen a group of large bridges that were 150 years old; Roman aqueducts were 400.

Q. Roman aqueducts were not concrete, were they?

A. They were built of natural cement and stone.

Q. Now, concrete bridges are steel re-enforced throughout, are they not?

A. Yes, sir. [503]

Q. That isn't true of a concrete building, is it?

A. That is generally true; they're also re-enforced.

Q. Are they re-enforced to the same degree that a bridge is?

A. No.

Q. Would you say, Mr. Hall, as an engineer, that there is no depreciation on a concrete structure?

(Testimony of Gerald D. Hall.)

A. I did not say there was no depreciation on a concrete structure. I said there was very little depreciation on certain types.

Q. I understand, of course, it varies as to type of structure and type of construction.

A. If you measure concrete by maintenance costs, there has not been any money spent on the Priest Rapids on maintenance, and it was started in operation in 1908, and construction was started in 1907.

Q. You say there has been no money spent in maintenance? A. Building maintenance.

Q. Aside from the concrete shell itself, of what are the floors in that building constructed?

A. Concrete.

Q. The interior—is there any wood used in the interior of the building?

A. I think there is in some places, and also in the blacksmith shop which is attached to the original building.

Q. Any depreciation in that part of the building? [504]

A. Oh, yes, the blacksmith shop needs repairs.

Q. Well, the thing particularly that I am interested in here, Mr. Hall, in appraising as an engineer a concrete structure, in arriving at the fair value of that structure would you take into consideration the age of the structure or would you put the same value on a structure 100 years old that you would on a brand new concrete structure?

A. No, but on the other hand, I testified to replacement in kind.

(Testimony of Gerald D. Hall.)

Q. I understand that. I'm getting into another angle now, altogether.

A. It is a difficult thing to explain the facts on those structures. I felt that the value assigned was replacement in equal condition at the time.

Q. Well, now, just a minute, getting back here to your testimony. Concrete, 2900 cubic yards, \$30.00 a yard. That represented, as I understood your testimony, what it would have cost to have poured that concrete at the time you made the appraisal.

A. That is correct.

Q. That was the cost of the concrete on that date. Now, you speak of replacing in kind. Actually your appraisal there on that concrete is a replacement by brand new concrete, isn't it, on the prices then prevailing?

A. That's right, equal in strength and condition to the [505] other building.

Q. Yes. Re-enforcing, 60,000 pounds, at 6 cents a pound, that was brand new re-enforcing on the prices then prevailing, wasn't it.

A. That's right.

Q. So actually your values ascribed to this building is just what it would take to rebuild that building from top to bottom out of brand new material at the time that you made the appraisal?

A. That is right.

Q. Now, I am asking you, Mr. Hall, as an engineer, in appraising concrete structures of this character, would you put the same value on a structure 100 years old as you would a brand new structure, identical in building?

(Testimony of Gerald D. Hall.)

A. From the viewpoint of obsolescence, no; from structural strength, yes, if it is in good condition.

Q. You consider that a concrete structure is ever-lasting?

A. No, but there's been very little deterioration in certain types of structures, proved by time.

Q. I understand that your rate of deterioration varied with the different type of structure, but the fact remains there is a very definite deterioration in any kind of concrete structure, isn't there?

A. Not in all kinds.

Q. Well, do you know of any type of concrete structure that [506] is ever-lasting?

A. No, I haven't lived that long.

Q. Have you any reason as an engineer to believe that there could be a concrete structure that would be everlasting?

A. There could be in certain types of foundations structures that would last a good many years. We have records on that now.

Q. Unquestionably, Mr. Hall, it would last a good many years. A timber structure will last a good many years, if it is properly taken care of, nevertheless it has a definite life span, doesn't it? It isn't ever-lasting?

A. Ever-lasting is too inclusive for me to form an opinion on, but I do know of structures that are in good condition that have lasted, oh, one 45, we have history on other structures of 200 and 300 years that are still in service for the purpose for which they were built.

(Testimony of Gerald D. Hall.)

Q. Yes.

A. They may have deteriorated. I would measure the depreciation by the amount of maintenance required. If the maintenance cost exceeds the cost of replacing with something better, then it has reached the end of its useful life, although it may still have physical life.

Q. In other words, Mr. Hall, you consider that a concrete structure if it is maintained will last indefinitely?

A. Yes, structures of that type I believe will.

Q. Nevertheless it requires maintenance to last indefinitely, doesn't it?

A. Yes, and that's the point.

Q. And a brand new structure doesn't require any maintenance for a considerable period thereafter, does it?

A. That is correct.

Q. However, as the structure gets older it requires more and more maintenance, isn't that correct?

A. That depends upon the type. In this case there's been no maintenance of the power house structure itself.

Q. Very many cracks in the structure?

A. No.

Q. Any chipping?

A. No; there's some weathering on the exterior.

Q. As an engineer would you expect that in the course of time there would be chipping and cracking there?

(Testimony of Gerald D. Hall.)

A. There might be; there might be damage caused by earthquakes that would cause a structure to be useless.

Q. Well, then, let me ask you a straight question, Mr. Hall. In your opinion is that structure out there, those two structures out there, the pumping plant and the power house, now 39 years old, as valuable in dollars as they were the day they were built, or as they would be today if they were brand new, for sales purposes?

A. I believe they are in this respect, for use.

Q. Now, just a minute, Mr. Hall; I'm not inquiring about whether they can continue to be used. We're engaged here in attempting to fix a value for sale purposes.

A. There is no sale for buildings of that kind if they can't be used.

Mr. Powell: May I ask counsel if he's inquiring today, or in April, or October, 1943, almost four years ago.

Mr. Ramsey: I can get back to that very easily. I am trying to determine whether this witness is recognizing any depreciation at all in the sales value.

(Whereupon, the reporter read the last previous question.)

Q. Now, in your opinion, Mr. Hall, are those structures out there, now 39 years old, worth just as much as structures that were built today replacing them in kind would be worth?

A. If sold as an operating property, yes.

(Testimony of Gerald D. Hall.)

Q. Is an operating property generally sold at 100 per cent of its cost, original cost or replacement cost?

A. No, it depends on the earning value and other factors.

Q. Yes, including depreciation?

A. Depreciation of certain elements, yes.

Q. Yes. Now, have you ever acted as a witness in these P.U.D. cases where electrical generation properties are being [509] taken over?

A. No, I have not.

Q. Do you know anything about their method of computing the value on those properties?

A. No, not in P.U.D.

Q. Have you ever acted for the purpose of appraising properties of this character for a purchaser or a seller?

A. Water works properties.

Q. Which?

A. Water works properties, principally.

Q. Did you ever appraise one of those properties without taking into consideration the depreciation and obsolescence factors?

A. No, I depreciated the pipe according to the type of material, very definitely. Certain types of structures carried very low or little depreciation.

Q. Yes, but they all carry depreciation, don't they?

A. Not all items. You have, for example, cast iron pipe that has been in use now for about 290 years. It is still the original pipe; there is very little depreciation there.

(Testimony of Gerald D. Hall.)

Q. You say very little. Now, we're making the distinction between very little and none. I understand, of course, that if the life of anything is extended over 100 years, we'll say, that your rate of depreciation will be [510] materially less than if the life of that particular thing is 60 years, or 10 years, nevertheless, you do recognize that there is a constant depreciation, don't you?

A. That is a difficult question to answer. By constant depreciation do you mean a uniform rate per year, or an assigned rate after a number of years?

Q. Take it either way.

A. For, I'd say, 100 years, there would be practically little or no depreciation of this power house as a structure, unless damaged by other factors.

Q. Well, then, let's get back to my original question. In your opinion, those concrete structures, now 39 years old, are worth dollar for dollar, for sale or purchase, exactly as much as if they had been constructed and finished yesterday?

A. No, I said they were worth the appraisal that I made of it at that time.

Q. Now, your appraisal was based on that very thing, and included brand new materials at prevailing rates, and labor at prevailing rates, and every other item that went into the cost of constructing those buildings, didn't it?

A. At the average rate at that time.

Q. Yes. Now, I'm asking you if in your opinion those buildings out there, 39 years old, are worth

(Testimony of Gerald D. Hall.)

for dollar as much as they would be if they just been completed [511] and were ready for sale today.

Mr. Powell: Today?

Mr. Ramsey: Today.

Mr. Powell: We're appraising them 4 years ago.

Mr. Ramsey: I'm not appraising them at all. I am testing the witness.

A. Well, at the time of the appraisal I'd say they were worth just as much.

Q. Do you think there has been a distinct variation in their value between 1943 and today?

A. Yes, sir; definitely.

Q. In what way?

A. Increase, because our bid prices are up.

Q. And if you were appraising the property today on a replacement basis your valuation would be higher, wouldn't it? A. Yes.

Q. Yes. Then your position is simply this, that a concrete structure of that character in 40 years does not depreciate at all in time?

A. That one hasn't required any maintenance, if you measure depreciation in maintenance.

Q. I am not interested in the slightest degree in whether there has been maintenance had on those buildings. I am asking you the straight question, if in your opinion [512] those two structures 40 years after they were constructed have not depreciated one dime in value?

A. I wouldn't say that, but they're substantially the same value.

(Testimony of Gerald D. Hall.)

Q. And you recognize no depreciation whatever? A. Not in that particular instance.

Q. In your opinion was there any depreciation in that power canal out there? A. No.

Q. Those canals of that character ordinarily do some silting up, do they not?

A. In this case that wouldn't hinder, providing it wasn't a sufficiently large deposit to interfere with the capacity of the canal.

Q. Well, could the bottom of that canal be filled up with sand without interfering with the capacity of the canal? A. No, not filled to any depth.

Q. Well, ordinarily, doesn't a canal of that sort, where it is taken from the river and carried for a distance of I don't know how long, this canal is about 2 miles? A. That's right.

Q. Carried for 2 miles at a much less rate of fall than the stream is, isn't there a tendency, particularly during high water when the water is muddy, to get a deposit of silt in the bottom of the canal? [513]

A. If there is any deposit, and there may be under those conditions you mentioned, during periods of low water it will flush out through the canal. That was evidenced by the operations at the plant.

Q. Now, may I ask just why, in your plans for the rehabilitation of that canal, you wanted an additional head for that very purpose?

A. That's right; that was to prevent the sand that is continuing to be along the bottom from going through the turbines.

(Testimony of Gerald D. Hall.)

Q. Yes.

A. But those don't remain stationary; they go along with the water.

Q. Would there be any less sand brought in by reason of adding an additional head and intake to that canal?

A. There might be, under some conditions. That was the reason for providing the additional waste-way capacity. I may have mis-understood you when you said head. I thought you meant quantity of water.

Q. Well, I am speaking of quantity of water in the canal.

A. That was the idea, yes.

Q. Then why did you consider it was necessary to add to the quantity of water going through that canal for the purpose, as you stated, of preventing silting up of the canal? [514]

A. No, that material wouldn't remain; it would go on through the turbines if we didn't divert it through the spillway.

Q. Now, just how do you take this sediment out of the water so it won't go through the turbines? How do you propose to do that?

A. That was only to take out the coarse particles that go along the bottom of the canal. That is done in a number of ways, sometimes a depression in the canal and taken out the side at the intake of the power house.

Q. Was there any change in the original intake channel of that canal between the time it was first put in there in 1907 and the time you cut the new channel over there?

A. Oh, yes.

(Testimony of Gerald D. Hall.)

Q. And what was the nature of that change?

A. There had been obstructions removed. I've forgotten how many; I know of three times there's been work on the canal to improve its capacity.

Q. Well, I don't know whether you understood my question. You did cut a new intake channel for the canal.

A. That's right.

Q. Now, as to the old intake channel——

A. That was also enlarged. We proposed to use both of them.

Q. And what made it necessary to enlarge that intake? Had it changed in any manner between 1907 and the time you were working out there?

A. I think there had been some work done there in 1933 or 1934; I'm not certain of that.

Q. Do you know what required that work to be done?

A. They wanted more water for power.

Q. Had anything occurred that cut down the capacity of that intake between 1907 and the time they did the work on it in 1933 or 1934?

A. Yes, there had been one section of dike on the island washed away, which decreased the head under the original plans.

Q. And I believe you stated that when you were out there working you found that the east end of the crib dam had been washed out?

A. That's right.

Q. And it was necessary to replace that?

A. We did that by large boulders pushed in, using a bulldozer. It was only a short section.

(Testimony of Gerald D. Hall.)

Q. Then am I right in assuming that over a period of years there is a depreciation in those canal facilities that require replacement and additional work?

A. This additional work here was for the purpose of increasing the capacity, not to repair silting of the canal, because when we de-watered it we found the canal sections very close to the original excavation, that is, the part on the lower end that had been excavated on a true section. [516]

Q. Well, now, your work on that crib dam was not a betterment, was it?

A. Well, when you said canal, I didn't consider the crib dam as part of the canal.

Q. Well, it is the means by which you divert the water into the canal, isn't it?

A. Yes, there is maintenance on the crib dam.

Q. Yes. Going on down to the irrigation system, what was the condition of the distribution system of the Priest Rapids Irrigation District at the time that you went in there and made your investigation?

A. The canal was in good condition as to seepage losses. Going further into the distribution, if you have reference to the lateral distribution——

Q. Well, I am referring to the entire system.

A. Well, the canal was in very good shape, but the laterals were not.

Q. There was a very heavy loss of water, wasn't there, through that system by seepage?

A. No, it wasn't greater than, in fact it was less than, the Sunnyside project.

(Testimony of Gerald D. Hall.)

Q. Well, without reference to the Sunnyside project, about what per cent of the water that was pumped into that system actually got on to the land that was being irrigated? [517]

A. At the time I made my tests and the checks of deliveries there was about 18 per cent.

Q. Loss?

A. Yes, that is correct. Now, I said a moment ago that losses vary with season, Mr. Ramsey, and that's true. Your losses in the main canal at the time I made that test was less than they should have been for that distance, and they have been found to be less than that by Dr. Woodburn two years before; however, if you have a bad winter, heavy freezing, your losses will go up until the canal is re-silted, so when I testified to percentage losses there, that was just at the time of the test.

Q. Yes. Now, that portion of the canal which had been concrete lined, the concrete had been very thoroughly broken up, hadn't it?

A. That is correct.

Q. And so far as any concrete lining was concerned, it served no useful purpose whatever?

A. It would probably reduce the losses a little, but it wasn't a true lining.

Q. Would you say that those ditches and canals, considering also that a portion, that a large portion, of the lateral system was pipe lines, had had no depreciation over 37 years?

A. Oh, yes; the canal very little, but the pipe lines definitely have. [518]

(Testimony of Gerald D. Hall.)

Q. You've made no allowance in your testimony for depreciation of anything, have you?

A. Oh, yes; in the lateral system, I reduced that to about 20 per cent of its original cost.

Q. You did recognize a depreciation there?

A. Oh, yes; wood stave pipe has a very definite life.

Q. Now, I note an item of engineering and legal, \$31,606.40. What does that cover?

A. That would cover all plans, field inspection, field surveys, and the necessary legal expenses of the organization of the district for the signing of contracts, the acquisition of new rights of way, and matters of that kind. Actually there should be also included publishing and some other office expense in there.

Q. In other words, you have included as a part of the replacement construction cost here all of the anticipated engineering expenses, anticipated legal expenses, and all anticipated stenographic expenses or office expenses in connection with the construction of the project?

A. That's right.

Mr. Ramsey: I think that's all.

The Court: Any further questions?

Mr. Powell: Yes, your Honor.

The Court: All right. [519]

Redirect Examination

By Mr. Powell:

Q. Mr. Hall, if a contract is let to do the work, aren't those expenses included in the contract?

(Testimony of Gerald D. Hall.)

A. The contract covers only actual contract construction. The owner bears the other costs necessary to the supervising of that contract, and the making of the plans, so that is the reason for the items.

Q. So who would pay this \$31,000.00 item in the replacement of this system, the contractor or the owner?

A. The owner.

Q. And that is figured as part of the owner's expense, is that right?

A. That is correct.

Q. Now, I believe you said you recognized the depreciation in the pipe lines and lateral system?

A. Yes, sir.

Q. And that figure, then, of the lateral system, does that represent the actual cost of replacing the system new?

A. No, that would be replacement in kind, or allowing for depreciation.

Q. Now, you have depreciated the canal lining 100 per cent, haven't you?

A. That is correct.

Q. Now, what is the condition, may I ask, of the cement, that is, the physical cement, in the power plant itself? [520]

A. It's in very good condition.

Q. Is the quantity that was used in making this structure more, or less, than would be used today?

A. That type of design, it is probably close to what would be used for those types of structures. You must use enough head room in the power house to enable you to operate a crane so you can

(Testimony of Gerald D. Hall.)

lift the long shafts and the generators up for repairs. You would require almost the same working area as you have now. There would be some changes in draft tubes, and there would be scroll cases instead of flumes. Off-hand I would say it would be very close.

Q. What about the walls, are they thick?

A. I don't recall the thickness, but it's a heavy structure throughout.

Q. It is a heavy structure throughout?

A. Yes.

Q. What supports the floor that holds up the machinery?

A. That floor is supported by partitions into the walls and the foundations; the supports continue on down through the lower floors to the rock.

Q. Is there an archway?

A. There are arches through the supporting walls.

Q. How much does one of these machines weigh, that is, a generator and turbine and shaft? [521]

A. I can't give you the weight, but the total load on the thrust bearing, which includes your hydraulic bearing, I think is 157,000 pounds. The thrust bearing is on top of the generator on number 2 machine.

Q. Now, you were asked on cross examination, Mr. Hall, about the depreciation in the power canal, and the repairs made in 1933. Were you there or familiar with them at that time?

A. No; that may be '33 or '35; I wasn't there then.

(Testimony of Gerald D. Hall.)

Q. Did you see the canal when it was de-watered in 1940 or 1941? A. Yes.

Q. By the way, have you been able to determine what date this work was completed, the last work?

A. In March of 1941.

Q. In March of 1941? A. Yes.

Q. And I believe you said that this work was done for the purpose of getting more water down to the power house? A. That's right.

The Court: We will recess now for ten minutes.

(Short recess)

(All parties present as before, and the trial was resumed.)

Redirect Examination

(Continued)

By Mr. Powell: [522]

Q. In your canal work there, Mr. Hall, did the work that was done there increase the flow of water in the canal? A. Yes, it did.

Q. And at what stage of the river?

A. At the low stages.

Q. And is there enough water, was there enough water, at the low stages of the river to operate the power plant at full capacity?

A. There was enough water in the river, yes.

Q. Just a matter of getting it into the canal, is that right? A. That's right.

Q. And do the obstructions in the canal that were there in 1943 retard the flow of the river?

A. Yes, they do.

(Testimony of Gerald D. Hall.)

Q. And the flow of the canal?

A. Beg your pardon, I meant the flow of the canal.

Q. And can those obstructions be seen from the surface of the water?

A. You can if the water is clear, you can see where the width and depth is inadequate.

Q. And why do the obstructions in the canal hold back the water if the water actually gets in the canal?

A. Well, the water doesn't enter the canal because of those obstructions, although the upper end is accomplished to a size that would permit the quantity to enter when the [523] remainder of the canal is enlarged.

Q. And where were these points in the canal where the obstructions were in 1943?

A. The canal is undersize from a point 3100 feet above the plant to 8400 feet above the plant, a distance of about a mile.

Q. And in 1943 how many yards of material would be required to be removed to remove those obstructions?

A. As I recall that, it was between 90 and 100 thousand.

Q. Now, you mentioned the efficiency of these pumps at 51½ per cent? A. Yes.

Q. How many pumps are there there?

A. There are three.

Q. And is that with the use of all three pumps?

A. No, that was testing only the two old pumps.

(Testimony of Gerald D. Hall.)

Q. The two old pumps?

A. They were the ones in operation at the time of test.

Q. And were they connected in series?

A. Yes.

Q. The two old pumps, the two pumps connected in series, were the ones that were——

A. They were the ones that were tested.

Q. And was the new pump tested then?

A. No, it was not operating at that time. [524]

Q. And why wasn't it?

A. They had sufficient flow in the canal. I believe the test was after the peak of the season demand was over, when they had changed from operating the center pump to the two old pumps, to reduce the demand.

Q. You mean to——

A. To reduce the demand for electricity or power.

Q. In 1941 when this work was completed, Mr. Hall, on the power canal, could it be seen that the flow was obstructed by the side walls of the canal?

A. Yes.

Q. And also the fact that the canal was not of equal width throughout.

A. That's right.

Q. You could see that without using instruments, is that correct?

A. Oh, yes.

Q. And where do you have to be in the canal to see that?

A. Just along the bank.

Q. On which bank?

(Testimony of Gerald D. Hall.)

A. Either one, as far as watching or observing the contracted portions of the canal.

Mr. Powell: That's all.

Mr. Ramsey: That's all.

(Whereupon, there being no further questions, the witness was excused.) [525]

Mr. Ramsey: The government moves to strike all of the testimony of the witness Hall relative to the value of the properties of the Priest Rapids Irrigation District, and instruct the jury to disregard the whole of said testimony upon the grounds and for the reason that it appears that the values fixed by the witness were fixed entirely upon the basis of reproduction cost.

The Court: The motion will be denied.

Mr. Ramsey: Exception, please.

The Court: Exception allowed.

HUGH B. TINLING

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

By Mr. Powell:

(Whereupon, Power data for the year 1942 was marked Defendant's Exhibit No. 14 for identification.)

Q. Mr. Tinling, I hand you defendant's identification 14, and will ask you if you know what it is?

A. This is a tabulation of the kilowatt hours

(Testimony of Hugh B. Tinling.)

generated in the Priest Rapids Irrigation power house, and the amount used by the District, the amount used at the Coyote Pumping Plant, and the amount on the Priest Rapids line at the plant, and the amount on the Priest Rapids line less the amount at the Coyote Pumping Plant, kilowatt hours, [526] as taken from the power house operator's daily data sheets, as identified by Mr. Yeager, and as taken from computations and billings which were identified by Mr. Salvini.

Q. That is the daily sheets for the year of 1942, the yellow sheets that were identified by Mr. Yeager? A. That's right.

Q. And the sheets in the file identified by Mr. Salvini? A. That is correct.

Q. Now, referring to column 1, there are 12 figures in the column; those are what?

A. The figures in that column are the kilowatt hours generated each month, and the total for the year 1942 of the kilowatt hours generated at the Priest Rapids power house.

Q. Now, the second column?

A. The second column is the amount used by the District for their own use, that is, for auxiliary and power house and operators' cottages and miscellaneous small use.

Q. Those figures do show on the daily sheets, Mr. Tinling? A. Yes.

Q. And what is column 3?

Q. The third column indicates the amount of kilowatt hours used at the Coyote pumping plant

(Testimony of Hugh B. Tinling.)

the various months of the year, and the total for the year, as shown in the compilations and billings introduced by Mr. Salvini. [527]

Mr. Powell: We offer the identification in evidence, if the Court please.

Mr. Ramsey: Standing alone, it is objected to, if the Court please, for the reason that this appears to be a compilation of power data in the hands of counsel covering a number of years, and this compilation covers only a single year. I have no objection to a compilation of that data going in for the benefit of the jury, but I do strenuously object to counsel picking one single year and submitting the power data for that one year alone. If this is to be of benefit here I think that a compilation of the data for the years that we have the information should be made available, not for a single year. It is objected to upon that ground.

Mr. Powell: The reason that we have one year, if your Honor please, is that that is the last full year of the District operation of the plant, and I assumed that would be the year we would take in determining what was used in the plant. Now, we can compile the information for such years as we have data available, but this is the last full year of District operation.

Mr. Ramsey: Well, I want to submit to the Court this, that the flow of water in the Columbia River available, the periods of high water and low water, vary from year to year, and inevitably that must affect the total [528] amount of power de-

(Testimony of Hugh B. Tinling.)

veloped. It might be greater in one year than the average of a number of years. I don't know that the year 1942 was a better year for the production of power by reason of the flow of water in the stream than the other years, but I do think we should have the data covering a period of years in order to get the mean average, the variation from year to year. The Court can very well see that counsel could pick a very advantageous year and compile the data for that year alone, and it would give an untrue picture of the production of the plant over a period of years.

The Court: Well, I think it has value as showing the power production for the last full year prior to the date of taking. It would go to weight rather than the admissibility, and either side can show the time prior to that, if you care to do so. I suppose you will have the witness explain this exhibit?

Mr. Powell: Yes, your Honor.

The Court: The objection will be overruled, the defendant's identification 14 admitted, and the government allowed an exception.

(Whereupon, Defendant's Exhibit No. 14 for identification was admitted in evidence.)

The Court: I might say that the court does not understand your caption "Total available for sale" and [529] opposite that are figures which seem to me to be more than the total output for the year. I just mention that because I thought the jury might not understand it either, because I don't.

(Testimony of Hugh B. Tinling.)

Direct Examination
(Continued)

Q. The two columns on the right, Mr. Tinling, are what?

A. The second column from the right is entitled "Priest Rapids Line, plant, kilowatt hours" and shows the amount of kilowatt hours metered on that Priest Rapids line that goes out of the power plant and supplies power to the pumping plant and also to the Pacific Power and Light at Coyote Junction. The last column shows the Priest Rapids line less the Coyote pumping plant, kilowatt hours used.

The Court: That would be column 3?

A. That is the last column on the right.

The Court: Well, the last column on the right would be the next to the last column minus column 3 on the right?

A. Yes, that is right.

Q. The last two columns are not to be added together, are they?

A. No.

Q. How do you arrive at column 4?

A. Column 4 is taken from the data that is tabulated in Mr. [530] Salvini's exhibit and the power plant exhibits, the operator's daily log sheet exhibits.

Q. Well, I will ask you, Mr. Tinling, if column 4 isn't column 1, the total production, less the plant use?

A. No, column 4 is not the total less the plant use. Column 4 is the—let's see, here—no, that doesn't tie in there; that is data taken directly from

(Testimony of Hugh B. Tinling.)

your records, your daily log sheets, and your data submitted and identified by Mr. Salvini.

Q. What is column 5, then?

A. Column 5 is your net amount that is left over after the District use and the Coyote Pumping Plant use; that is the amount that was available for sale to the Pacific Power and Light Company, plus the addition at the bottom that is shown as Beverly, which is the amount that was also available for sale, but taken off on the other line by Pacific Power and Light.

Q. Then the two items appearing in the lower right hand corner, Mr. Tinling, the first item of eleven million kilowatts plus is before the Coyote use has been taken out, is it not?

A. That is right.

Q. And the last figure, or 8,760,000 kilowatt hours, is what?

A. That is the surplus power that was available for sale.

Q. After—— [531]

A. After the district's use for their station facilities and for pumping, and to that should be added the amount that was taken on a separate line known as the Beverly line, in the amount of 17,481 hours, and the total of the two, or 8,760,685 kilowatt hours, is the number of kilowatt hours that were available for sale by the Priest Rapids Irrigation District.

Mr. Powell: Is that clear, your Honor?

The Court: Yes.

Mr. Powell: That's all.

(Testimony of Hugh B. Tinling.)

Cross-Examination

By Mr. Ramsey:

Q. I notice in column 2, District use; now, just what is that item?

A. Those are the items that are used for station auxiliaries, for lighting the operators' cottages, and heat and light around the power plant and the pumping station.

Q. I notice in column 3, Coyote use?

A. That is the amount that was used for pumping at the Coyote Pumping Plant.

Q. Then that was actually also power used by the District? A. That is right.

Q. So both column 2 and column 3 represents use of power by the District itself?

A. That is correct, one column to identify the amount used for pumping, as compared to the amount used for station [532] auxiliaries and miscellaneous use.

Q. Now then, as I understand the set-up, the power sold by the Priest Rapids Irrigation District to the P. P. & L. Company, with the exception of the small amount diverted on the Beverly line, was delivered at Coyote Junction?

A. That is correct.

Q. And was delivered over the District's own line? A. That is right.

Q. Was there any line loss? A. Yes, sir.

Q. Was that line loss indicated when you say that there is 8,760,685 kilowatt hours available for sale?

(Testimony of Hugh B. Tinsling.)

A. Yes, that is the net amount after the line loss has been deducted.

Q. Where was that line loss deducted in this compilation?

A. That shows in the daily log sheets and the exhibits introduced by Mr. Yeager and Mr. Salvini.

Q. Well, I am asking now, where does it show on the compilation?

A. It wouldn't show on the compilation. It would show in the exhibit identified by Mr. Salvini.

Q. I understand that, but we've got a compilation here; we show so much generated; we show a deduction for District use, which you say is electricity used at the plant in the various auxiliaries and I presume in furnishing power [533] to the operators' houses and the operation of a small pump that was there in the plant; then you show a deduction for the electricity metered out for use by the District at the Coyote Pumping Plant, but I don't see any item of deduction for line loss on that total which you say is available for sale on the District lines, to the point of delivery.

A. No, the line loss as a separate item has not been tabulated in this tabulation.

Q. Has there been any deduction made in the amount available for sale, of that line loss?

A. Yes.

Q. Where?

A. In the exhibit identified by Mr. Salvini.

(Testimony of Hugh B. Tinling.)

Q. I'm not talking about the exhibit, I am talking about the compilation. Is there any item for line loss on your compilation?

A. Yes, there is.

Q. Well, show it to us. Where is it?

A. It is not listed on the compilation, but it has been considered and taken into consideration in arriving at the figures in the right hand column.

Q. In the left hand column?

A. No, in the right hand column.

Q. In the right hand column. Well, now, I have made a computation [534] here for January. You show a generation of 917,900 kilowatt hours, a district use of 21,604 kilowatt hours, a use at the Coyote pumping plant of 2372 kilowatt hours, and I have deducted that from the final item in that last column, and I am going to ask you to do the same and show me where there has been any deduction made for line loss there?

A. I did not follow you on your last part there. You said you made your deduction of those two from what?

Q. Of those two items, the District use and the power used at the Coyote pumping plant.

A. And you deducted that from what?

Q. Deducted that from the last column, from the item shown in the last column.

A. Well, you wouldn't—

Q. From the item shown in the next to the last column, and I am unable to see where there has been any further deductions made.

(Testimony of Hugh B. Tinling.)

Mr. Powell: Are you referring to January, 1942?

Mr. Ramsey: Yes.

Mr. Powell: I think I may be of some assistance, if I may, your Honor.

A. (Witness) Take your item Coyote use, your column headed Coyote use for January, and you have an item of 2372 kilowatt hours. [535]

Q. Yes.

A. And that is made up of the item actually used at Coyote of 2156 hours, plus 10 per cent line loss or transmission charge, making the total of 2372. In other words, your loss has been allowed in that figure of 2372, which includes a 10 per cent loss on the amount actually transmitted and used.

Q. Well, now, Mr. Tinling, your item of 893,028 kilowatt hours, being the Priest Rapids line less Coyote, your line loss of 10 per cent should be charged against the total electricity metered on that line, shouldn't it?

A. No; that power is available at the Priest Rapids power plant for sale.

Q. That is true, but it is sold at the end of the line, isn't it, to the P. P. & L.?

A. No, your 895,400 is the amount that was available there, but that is the difference between that and column 3, there, the amount of kilowatt hours that was available for sale by the Priest Rapids Irrigation District at the power house.

Q. But actually it wasn't sold at the power house, was it?

(Testimony of Hugh B. Tinling.)

A. It was sold at the power house, yes, but I think that they had to absorb the line loss to Coyote Junction.

Q. Yes, that is true, so you haven't got any deduction here for line loss, have you? [536]

A. Yes, we have a deduction for line loss of the Coyote use.

Q. Oh, then you're simply charging the District up for line loss.

A. That's right.

Q. But your commercial power you have for sale, you haven't charged any line loss?

A. It is available at the power house.

Q. Is it delivered at the power house?

A. Yes, if they want to take it at the power house.

Q. Is it actually delivered?

A. It is delivered to the bus bar at the power house.

Q. Isn't it a fact that the contract provides that the power shall be delivered at the Coyote Junction, and that there shall be a stipulated line loss?

A. I don't know; I have never seen that contract.

Q. Then you don't know anything about it except the amount of power generated at the plant?

A. I have the amount of power available at the power plant for sale.

Q. Ordinarily does a power company market their power at the power house.

A. Yes, sir, they do.

(Testimony of Hugh B. Tinling.)

Q. Do you know of a single instance where that is done? A. Yes, sir.

Q. Where. [537]

A. Pend Oreille Mines and Metals Company at Metaline Falls; the Montana Power Company at Troy, Montana, is two instances.

Q. Ordinarily doesn't any power company deliver the power over their own lines to the users?

A. Not necessarily; depends on the type of contract, the type of user, and the amount of power available, whether it is wholesale rate or retail.

Q. Well, let me ask you this: Is it a usual procedure for every user of electricity to build a line into the power plant of the generating company in order to get power?

A. Not every user. It is in a good many instances where they're taking power wholesale.

Q. As a business man in this electrical field, is it your position that any potential user of the power generated by the plant would be willing to build its own line into the plant in order to get delivery of power?

A. They would if the rate was low enough, yes.

Q. I suppose so, if they would give it to them. I am asking now under normal business conditions.

A. Yes; in the instance, I just mentioned, the Pend Oreille Mines and Metals, the customer builds his line into the power plant, and pays approximately two and a half times the rate the Priest Rapids would charge you for sale of this power.

Q. Oh, I can very well conceive where a man

(Testimony of Hugh B. Tinling.)

might do almost anything and pay any rate in order to get power, but I am dealing now with this particular set-up. Now, the only purchaser of power from the Priest Rapids was the P. P. & L., wasn't it?

A. So far as I know, yes.

Q. And do you know of any other potential or prospective purchaser of power than the P. P. & L. in that area at the time the government took over?

Mr. Powell: If your Honor please, I don't think this is proper cross examination.

Mr. Ramsey: Well, I do.

Mr. Powell: Well, we're putting in a tabulation, and he's testifying about the figures in that compilation.

The Court: He can answer if he knows. I think the testimony is the amount of power available for sale. I will overrule the objection.

(Whereupon, the reporter read the last previous question.)

A. No, I don't know of any.

Q. And the contract with the Pacific Power and Light provided for delivery of that power at the end of the company's transmission line at Coyote Rapids, didn't it?

A. I don't know, I haven't examined that contract.

Q. You don't know. In any event, this tabulation doesn't [539] make any deduction for line loss on your commercial power, does it?

A. No; this is the kilowatt hours that are available for sale.

Mr. Ramsey: That's all.

The Court: Any further questions of this witness?

Mr. Powell: No, your Honor, that's all.

(Whereupon, there being no further questions, the witness was excused.)

JOSEPH S. PICATTI

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Will you state your name, please?

A. Joseph S. Picatti.

Q. Can you hear me all right, Mr. Picatti?

A. Yes, I can hear you.

Q. And you want to be sure and speak loud enough so the jury can all hear you.

A. I'll do that.

Q. Where do you live, Mr. Picatti?

A. In Yakima.

Q. What business are you engaged in?

A. In the electrical machinery and contracting.

Q. Where. A. 105 South Third, Yakima.

Q. How long have you been in Yakima?

A. Since 1928.

Q. Where did you live before you came to Yakima? A. Hanford.

Q. How long did you live in Hanford?

A. Since 1908, with the exception about four years between '18 and '23.

(Testimony of Joseph S. Picatti.)

Q. And what did you do at Hanford?

A. Well, I started from bull cook in a hotel, and got up to assistant manager of the company.

Q. And what company?

A. Hanford Irrigation Power Company, Black Rock Power & Irrigation Company, Consumers' Ditch Company, and Agathon Land Company.

Q. Did you at any time operate the Priest Rapids power plant? A. Yes, sir.

Q. When?

A. Well, I've operated as a cub operator, about 3 months, in 1909, and then I operated occasionally, now and then, and in 1912 I operated a whole year; I've operated at Coyote some, and then I was in charge of the equipment while it was in the hands of the receiver, Marvin Chase, and that time I was in charge of the whole equipment, and from 1924-'25 up to '27 I was also rather in charge of the lines and so forth. While I was bookkeeping I was in charge [541] of construction work for the company, while I was working for the Hanford in the office.

Q. Did you ever do any work of replacing or repairing any of the large equipment there in the power house? A. Yes, sir.

Q. When?

A. That was done when we took the contract to furnish the turbine on number 2 generator.

Q. Then you're the one who put in the new turbine on the number 2 generator? A. Yes, sir.

Q. What kind of wheel was taken out?

A. The old Francis type wheel.

(Testimony of Joseph S. Picatti.)

Q. And what kind did you put in?

A. Propeller type.

Q. Where was this work done in the plant?

A. Down in the pit, down in the turbine chamber.

Q. And what did you—do you recall how long it took?

A. Beg pardon?

Q. Do you recall how long it took? To do the work?

A. Well, we started the work as soon as we got the contract, along about September or October, and then we got done just in time before the water came up, along about May.

Q. And how did you get the machinery into the pit?

A. They de-watered the canal and removed the grates and put [542] it in through the head gates of the power house.

Q. Did you have to change the draft tube?

A. Yes, sir.

Q. And what is the draft tube?

A. Well, the draft tube is where the water goes out from the turbine.

Q. Through the turbine and out of the power house?

A. Out in the tail race, yes.

Q. And was that a good wheel that put in there?

A. Well, we would naturally expect to—yes, it was a new wheel.

Q. It was a new wheel?

A. Yes.

Q. What kind of a wheel was it?

A. Propeller type.

(Testimony of Joseph S. Picatti.)

Q. Who manufactured it?

A. Allis Chalmers Manufacturing Company, Milwaukee.

Q. During the time you were putting in the wheel did you have occasion to observe what kind of concrete was in the power house?

A. I sure did.

Q. How did you find it out?

A. Because we had to do a lot of chipping in there. We put in 344 shots in that building, blasted around, and towards the last we were able to chip off four or five [543] inches of concrete from the walls, and we never cracked one of the walls. Of course, we just put in little shots, in order to make room for the new wheel.

Q. And can you state, Mr. Picatti, whether the concrete was good or bad concrete?

A. The hardest one we ever found in my contracting work, yes.

Q. And were there any cracks or defects in the concrete building?

A. No, not to my knowledge. I wish there had been, at that time.

Mr. Powell: I think that's all.

Mr. Ramsey: No questions, that's all.

The Court: That's all, then, Mr. Picatti.

(Whereupon, there being no further questions, the witness was excused.)

The Court: The court will recess until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 13, 1947,

1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

J. C. STEVENS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows [544]

Direct Examination

By Mr. Powell:

Q. Your name is J. C. Stevens?

A. Yes, sir.

Q. Where do you live, Mr. Stevens?

A. Portland.

Q. What business are you engaged in?

A. Engineering; civil engineering.

Q. Are you a professional engineer?

A. Yes, sir, licensed in Oregon and Washington, Idaho, Montana.

Q. Where did you take your engineering work?

A. I am a graduate of University of Nebraska. I have a degree there of Bachelor of Science in Civil Engineering, and later a degree of Civil Engineer, in 1928, and I have a degree of Doctor of Engineering from the Oregon State College.

Q. Have you occupied any public positions as engineer?

A. Yes. I was assistant state engineer of Nebraska in the early days of the Reclamation work, and then I was assistant engineer in the Reclamation Service, it was called then, now called the

(Testimony of J. C. Stevens.)

Bureau of Reclamation. I was secretary of the State Conservation Commission, I mean a member of the State Conservation Commission, in Oregon; secretary of a super-power survey committee that made a study of power in the Pacific Northwest.

Q. And what has been your experience with irrigation and irrigation districts?

A. Well, I've—I was also assistant, I mean the District Engineer in the Pacific Northwest for the Reclamation Service in 1906, '07, '08, up to 1910. In that work I had charge of investigation for all of the water supply problems, 'most all of them, for the Bureau of Reclamation in this northwest, including a study of the accounting for the water system, for the water taken in and distributed, delivered, loss in seepage, and so on, a regular accounting system for all the water taken into the Sunnyside Canal, in 1908, I think, and 1909. I think that system has been expanded now to the other reclamation projects in this territory. Then I was over in Spain for two years and a half, primarily on hydroelectric development, but also on study of irrigation projects there, and on return here I designed and constructed the Oroville-Tonasket Irrigation Project up in Okanogan County in 1915 and '16. I've had—oh, I've been in close touch with irrigation throughout this northwest, studied duty of water, written considerably about it in technical papers.

Q. Did you have any connection during this time, or make any studies in connection with the properties around White Bluffs and Hanford?

(Testimony of J. C. Stevens.)

A. Yes, I did. I resigned from the government service in 1910, and one of the first engagements I had was a study of the possible future development, and the program of development, for this irrigation project later taken over by the Priest Rapids Irrigation District.

Q. When was that? A. That was in 1911.

Q. With whom did you work?

A. With Mr. D. C. Henny. Mr. Henny was supervising engineer when he first came here about 1905 for all of the reclamation work, and then he left the government service and opened up an office for private practice, and I was him in some private projects. In this particular one we served in the capacity of partners on that project. He's deceased now.

Q. And there were reports made?

A. There were reports made for the future development of the country, of that area, studies and reports for distribution system, and improvement of the pumping facilities.

Q. By whom were you employed in making that study?

A. Pacific Power and Light Company.

Q. Did you have—have you had any connection with the design or construction of power plant properties? A. Yes.

Q. With the Lewis River? [547]

A. Yes, I made reports and studies on proposed developments on the Lewis River, and on the Deschutes River in Oregon. As I say, I was in

(Testimony of J. C. Stevens.)

Spain from 1912 to '14, largely on hydro-electric development, and it culminated in the construction of two projects for which I served as chief engineer.

Q. And what was the total power output of those projects?

A. One was a small one the Gerri plant, designed first for power to be used during the construction program, but it was later included in the general plan of development. The other was the Seros project, taking water from the Segre River. That was a development of about 80,000 horsepower, and included transmission lines.

Q. Have you ever done any work for the Montana Power Company?

A. Yes, I have made a study in 1918 and 1919 of the ice problems which they had in connection with their projects or plants on the Madison and Missouri Rivers, then the next work I did was for the evaluation of the power sites which the Montana Power Company had along the Missouri River.

Q. About how many were there?

A. Oh, seven, I think.

Q. And were you—were there any other hydro-electric developments?

A. Yes. I designed, I charted the design and the supervision [548] of construction of the Leaburg plant for the city of Eugene, a municipally owned system, and later had charge of the design and construction of a steam plant for them to serve as an auxiliary for their power system. Then we made studies for the reconstruction of their early

(Testimony of J. C. Stevens.)

plant, known as the Walterville plant. They have some old Pelton wheels in there; they're planning to replace them with new units. We have already constructed the spillway for that project. The rest of the work undoubtedly will go ahead when they can get the equipment necessary.

Q. Have you ever written any articles on hydro-electric development, or power?

A. Yes, I have, quite a little. I wrote the chapter in Calvin Davis' handbooks on hydraulics. It is rather a large volume, and I wrote the newest edition, the chapter on hydraulics.

Q. Does that handbook have very wide distribution?

A. I think so, yes.

Q. Are you a member of any electrical engineering society?

A. American Institute of Electrical Engineers, American Society of Civil Engineers.

Q. Occupy any offices?

A. I served as director and later president of that society, in 1945. I am also a member of the American Institute of Consulting Engineers, and the Professional Engineers of [549] Oregon. I was the first president of that organization.

Q. What is the name of your firm, Mr. Stevens?

A. Stevens and Koon.

Q. With offices where?

A. Offices in the Spalding Building, Portland.

Q. Are you a partner in any other firm?

A. Yes, I am a partner in a manufacturing firm, of the name of Leupold and Stevens Instruments.

(Testimony of J. C. Stevens.)

Q. What kind of instruments?

A. Well, we manufacture engineering instruments of any kind, surveying instruments, water level recorders, rifle scopes, navigation instruments, and radio recording instruments for water levels and flow meters.

Q. For what?

A. Water level recorders by radio, and flow meters; quite a long list of instruments. We have about 65 employees there.

Q. And when you say flow instruments, what kind of instruments are they?

A. Well, those would be instruments for measuring the flow in Venturi tubes or orifices or pipe lines.

Q. Did you say Venturi tubes?

A. Yes, V-e-n-t-u-r-i; it is a tube that has a constriction and then an expansion. The increase of velocity in that construction is a measure of flow. We also make instruments [549A] that record the flow in nearly any type of measuring device.

Q. We notice on defendant's Exhibit 10 the reference is to a Stevens continuous recorder.

A. That is one of our manufacture, yes.

Q. Used by the United States Geological Survey?

A. Yes, they have a large number over the country. They're using them very extensively.

Q. And what does it measure?

A. Well, it measures the height of water, records—makes a graphic record of the rise and fall of the water surface, and the engineer of the Geological

(Testimony of J. C. Stevens.)

Survey makes discharge measurements of the river at different stages and developes what he calls a rating curve, that is, a calibration curve, so that he can determine the flow for any given height of water, and he takes the average daily height from this graph, from this recording chart, and in that manner tabulates the flow that appears on those sheets, and they're also published every year by the Geological Survey in water supply and irrigation papers.

Q. Have you previously been a witness, Mr. Stevens, in cases involving evaluation of hydro-electric plants? A. Yes, I have.

Q. And of sites for hydro-electric plants?

A. Yes, I was a witness for the city of Centralia in the [550] acquisition of some of their lands for hydro-electric purposes. I have done quite a lot of work for the Washington Power Company in connection with their lands along the Coeur d'Alene River, and I have made valuations for quite a number of projects in which some element of power is involved; for example, the city of Hood River, there is some power involved there. I made evaluation of water system for the city of Yakima, city of Salem, Boise, Idaho, Dallas, Oregon, and various other places, and I mentioned a moment ago the power work for the Montana Power Company.

Q. Were there valuation cases involved there?

A. It involved the valuation of power sites, and in arriving at that I set up a series of substituting steam plants for the power, for the hydro-electric

(Testimony of J. C. Stevens.)

plants, as some measure of index of the value of those power sites. That was one way of getting one element in the valuation.

Q. And what about the Southerland Irrigation District?

A. Southerland Irrigation District was a valuation of some old property that a bank had some bonds on, that included the pipe lines and the flumes; no power involved there, however, it was irrigation.

Q. No power involved? A. Irrigation.

Q. Mr. Stevens, when was your first connection, or when was [551] the first time that you examined the properties around White Bluffs and Hanford?

A. 1911.

Q. How long did you spend there, how much time?

A. Oh, we worked on that project for nearly a year, I think.

Q. How much of the time were you there personally?

A. Well, I was there, oh, several weeks at a time, or a week at a time, many different times. We had survey parties in the field, and land classification crews in the field, and we run out extensions of the irrigation system, and laid out a distribution system. I wouldn't know how much time, but quite a substantial portion of all the work was done by parties working under my direction.

Q. Did you at that time go up to the power house?

(Testimony of J. C. Stevens.)

A. Oh, yes, I examined the power house and the facilities there, and also the Coyote Pumping Plant.

Q. And you have been up there since?

A. Yes, I was there.

Q. Was the canal located in 1911 where it is now located, that is, the irrigation canal?

A. Just about, yes, unless there's been some breaks and they have made some minor changes; at least as far as I can tell. I was there in September of this last year, 1946, and again in January of 1947.

Q. You mentioned the pumping plant. Was the building that [552] housed the pumping plant in the same location then as it is now?

A. Same building that is there now, yes, sir.

Q. Did you make any tests as to the output of the plant, the pumping plant, at that time, I mean?

A. No, we did not. Well, I say we did not; we made some measurements in the canal showing the flow and what the pumps were producing. At that time the two first units, the two Allis Chalmers motors and pumps that were installed in either end of the pump station, they were inadequate for the service. They were designed to deliver, I think the rating was $62\frac{1}{2}$ cubic feet per second, or second feet, a further term, under 37 foot head, but the head at this plant varies with the stage of the river between 40 and 65 feet, and it was very difficult to get any water up there into that canal at all at the normal speed of the pumps, so the expedient was adopted of speeding up the generators at the Priest

(Testimony of J. C. Stevens.)

Rapids Power Plant. The normal speed was 150 revolutions per minute, and I think they speeded up to 180 revolutions per minute, and that enabled them to pump water up into the canal. Of course, they couldn't continue to do that because that gave them an unsalable power if they wanted to sell any portion of that, so the expedient was later adopted of connecting those two old pumps in series. By that I mean [553] that a 30 inch pipe line was laid in the building to connect the discharge of one pump with the suction side of the other, then when both ran together they would have the capacity of one unit under twice the head, roughly, and then later the third unit that is there now, it was not in 1911, it's been added since.

Q. I see; so, Mr. Stevens, when you say these pumps are connected in series, they were connected—the intake from the river came into only one of the pumps.

A. That is right.

Q. You're describing the conditions that were there in 1911?

A. No, in 1911 they had two separate pumps that were not connected together, and each of them had their own suction from this tunnel, and they were connected later at some time. I don't know when that was done, but very shortly after 1911. Our studies for the canal and pumping plant station was to find out very definitely what each of those units would do by itself, and how they could be speeded up, and the water that we could divert from them after they were speeded up.

(Testimony of J. C. Stevens.)

Q. Now, did you examine the inside of the pumping station the last time you were there?

A. Yes, that was in January, oh, the 29th or 30th of January, 1947.

Q. About three weeks ago? [554]

A. Yes, something like that.

Q. And were you there in September?

A. I did not go to the Coyote Pumping Station in September, but I did go to the power plant. We had a little car trouble and we didn't have time to get to the Coyote Station. We had planned to do so, but darkness fell before we could make it.

Q. Now, would you just describe in general terms, Mr. Stevens, the condition that you found when you examined the pumping plant last month?

A. Well, the building was locked, of course, and the generators were covered up with canvas.

Q. Do you mean the generators?

A. I mean the pumps. The motors, there's two large induction motors, and two of these pumps, the original pumps. The motors were rated, I think, at 450 horsepower, and the pumps were rated for 62½ cubic feet per second under 37 foot head, each of them, but being connected in series, of course they can pump under twice that head the quantity that one pump would otherwise pump. The switch board was there intact. The crane was there. I examined the building. It was in very excellent shape. The substation transformer building was there, and the two 4-pole structures, one over the substation and another one up on the hill. The pipe line there had

(Testimony of J. C. Stevens.)

been changed [555] from the original pipe, which was a single 72 inch wood stave pipe. They have been converted now to two 42 inch cement culvert pipes, bell and spigot culvert pipes; at least it looked so from the inside, and the canal had been divided so that there was two entrances into the canal. Concrete structures have been constructed there; that's since I knew it in 1911. The third pump, which I had never seen before, is a—was a variable speed pump, had a capacity rated at 2800 gallons per minute, I think, under a 60 foot head, but it had controllers on the switch board so that the speed could be varied somewhat to pump more efficiently at the variable heads that would occur there, and on the discharge sides of all three pumps was a large hydraulic operated gate valve, 30 inch. There was a pump there for supplying water, I presume, for supplying water for domestic supply, and also pumping into a tank up on the hill that I took to be a reservoir for the insured operation of these hydraulic valves, and then there were two-way valves in the piping. You see, the hydraulic valve consists of the ordinary gate valve that is connected to a piston and a cylinder, and then they have pipes connecting the upper end of the cylinder and the lower end of the cylinder, and they're connected to the water system through a two-way valve, so if they want to lower the valve they turn this valve in one direction; [556] that lets the water in from the upper side, and out from the lower side of the piston. If they want to raise

(Testimony of J. C. Stevens.)

it they turn it the other way, and reverse it, and that makes the valve rise. Those are used just to save labor and long hand turning of the valves. There was an oil system there for the bearings, that is, the piping was there. This pump that I speak of was gone. It was not there. The place for its location was there. The oil pumps were gone, had been taken away, but their location was still there. The building I examined as far as I was able to examine it, and I went all around it; it was in very excellent condition. The concrete was in good shape.

Q. You were not there in 1943, were you?

A. I was not, no.

Q. Have you examined the inventory list made by Mr. Tinling and introduced in evidence as Exhibit 9?

A. Yes, sir.

Q. And you heard his testimony describing the articles, describing the equipment?

A. Yes, sir.

Q. Now, there were transformers in the substation there at the pumping station?

A. Yes, three transformers at the substation.

Q. You've given us a general description of the power plant, have you not? [557]

A. Of the pumping station.

Q. Of the pumping station, I mean.

A. Yes, except that I did not mention the transmission line that runs about a mile and a half to the southward and there joins with a transmission line from the Priest Rapids Power plant that ex-

(Testimony of J. C. Stevens.)

tends on eastward from that point, or it did. Part of that line had been robbed of the insulators, and the line was not in service.

Q. Now, did you see the transmission line that extended from the pumping plant up to the power plant?

A. Yes, we followed it along the road. You could see it from the road.

Q. And from the amount that was still there did it correspond with the inventory given by Mr. Tinling.

A. I should say so, yes.

Q. You did not make an inventory of the poles?

A. I did not. I had the inventory with me, and I just made a spot check.

Q. Did the inventory appear to be correct to you?

A. Yes, sir, it did.

Q. And did you check the inventory at the pumping station?

A. Yes, in general terms I did, what we call a spot check; looked at the larger, more important items, and verified them.

Q. Some of the things on the inventory were not then in the [558] pumping station, were they?

A. The inventory included the whole power plant, electrical equipment for the power plant, and the transmission line, two substations, and the pumping equipment.

Q. There is some of the equipment that appears on Mr. Tinling's inventory, Exhibit 9, that was not in the pumping plant when you were there in January of this year?

(Testimony of J. C. Stevens.)

A. Oh, yes, that's right, here were some pumps and motors and I don't know what all were out. Places you could see they had been taken away; the foundations and supports were still there, and the pipe connections were still there, hanging in the air.

Q. You heard his testimony concerning the transmission line, and from your checking that you did did it appear to be as described by him?

A. Yes.

Q. That is, the part that you could check?

A. Yes. As I say, they had been robbed of some of the parts, some of the insulators, some of the wire, was gone.

Q. By that you don't mean anybody committed larceny?

A. What I mean is, I assumed that the Army Engineers had taken it for service elsewhere, same as the pumps they had taken out of the Coyote Station and other facilities, put them some place else.

Q. Now, at the power plant, did you make a similar check of [559] the inventory?

A. Yes, I did.

Q. Did you examine the power plant in September of 1946? A. I did.

Q. And how did you examine it?

A. Well, I went up there by automobile, through the Hanford area. I was met there by Mr. Hall, who came over in his 'plane, and together we went over the power canal and the power house, the pumping station; he explained the work that

(Testimony of J. C. Stevens.)

had been done in '38 and '40, and all other features concerning the pump station. I read the gauges and examined all the important portions of the equipment, the generator, governors, pumps, and the substation.

Q. And did you subsequently make a check of the property there?

A. I went here again in January, I think it was January 30 or 31, I've forgotten the exact date.

Q. Did you at that time have a copy of the list that's been introduced as Exhibit 9, the Tinling list?

A. Well, I had a typewritten copy that had, I think, 'most everything that this list had. There might have been some additions to this exhibit that I did not know about. I didn't compare them with this exhibit.

Q. You did not compare them with this exhibit?

A. No. [560]

Q. But you did have a list?

A. I had a list, and I made a list of my own, of the important pieces.

Q. Have you since compared that list with the Exhibit 9?

A. Yes, in a general way. I haven't in minute detail.

Q. And did your checking of the property there at the power plant in January substantially correspond with the inventory that is introduced?

A. Yes, except for some rather minor things; some of the serial numbers on some of the units

(Testimony of J. C. Stevens.)

were not what he had on his list. There was one irrigation pumping set, pump and motor, that was not included on his list. In general, however, his list was in general conformity with what I saw there.

Q. Now, did you at any time look at the power canal? A. Power canal?

Q. Yes. A. Yes.

Q. When?

A. Well, in September, 1946. I did not go up to the power canal in January, '47; of course we could see it from the power station, such portion of it as was visible from there we could see it, and did examine the lower end of it with some ideas there of putting in some guards, possibly, for sluicing the sand out. [561]

Q. Now, would you just describe the power house in general terms to the jury?

A. Well, the power house is a concrete structure, very well built. Aside from the building that's there, there is an extension to the southward that was intended, undoubtedly, for an increased dimension of the power house, that is, for an addition to be put on to the power house. In 1911 when I was there the plans that I did see provided for six generators there, but they never put in but two, and this extension of the power house was undoubtedly intended to cover that extension. Part of the retaining walls and up to the elevation of the generator floor was the skeleton work of a new addition to that building. Well, the power house is right

(Testimony of J. C. Stevens.)

across the end of the canal. The north and south direction of it is parallel with the river bank. The intake to the water wheels is through some racks there, and there are two units in the plant. One is the old original unit that was installed, it was there in 1911, I understand it was installed along about 1906 or '07, and was running when I was there in September. This unit has a generator and a turbine with three water wheels to it. The purpose of those three was that on account of certain variations in the head due to the flow in the river, that these three turbines would maintain the speed of the unit up to that required for [562] commercial power.

The other, the second unit, is a General Electric unit, a new one, with a propeller type of wheel, and with its governor, a Woodward governor. There is also a small turbine that operates a direct current generator for excitation purposes, and there is also a motor generator set for excitation, that is, there is a direct current motor—I mean, an alternating current motor, induction motor, and coupled to the same shaft is a direct current generator. That, I believe, is used as an emergency service for exciting the field of both the generators.

Then there is the switch board with all of its rather intricate instruments and paraphernalia, some seven panels, I think; and then there is down on the second floor, the lower basement floor, there is an extension extending on the river side that houses the transformers and the circuit breakers.

(Testimony of J. C. Stevens.)

The water that leaves the water wheels goes out into draft tubes molded in the concrete; and below the draft tubes are some remnants of some old gates that were used with some operating mechanism there that I think are entirely unused at the present time. Their purpose, I think, was to seal off the water from coming into the unit in case it was necessary to examine the wheel, or make any repairs to it, and the river was high enough to get into the unit. [563]

Now, then, there are also gates at the head, in the canal, in the penstocks that go into these two units, four of them.

Q. Did you say in the forebay?

A. In the fore-bay, that is in the canal, yes. The fore-bay is usually considered the water just ahead of the penstocks in the canal. Of course, it was at the end of the canal, the fore-bay.

Q. The gates were there?

A. The gates were there, yes, you can see the mechanism for operating them. Now, in addition to that there are three cottages for operators, with wires going over to them, transformers, there is the pump for irrigation service, that is, there is an eight inch pump with a 50 horsepower motor on it, used for, I presume, irrigation of some of the gardens and probably some of the land up there, for irrigation, I am so informed, and then there's a couple of pumps there, I think, for domestic water supply, used for the cottages.

(Testimony of J. C. Stevens.)

Q. Mr. Stevens, you described or mentioned an exciter. Where was that located in the power house?

A. Well, it is in between the two units, now, a little bit to the west, I should say, of the center line of those units.

Q. And does it look like a little generator? [564]

A. Well, yes, it looks like a small generator, it is a small generator, and the turbine is down below.

Q. And it is operated on a small scale the same as the large ones on a large scale?

A. Exactly, except this is direct current. In order to excite these magnetic coils on those generators, you have to use direct current for that, and this produced direct current. Alternating current, the voltage rises to a maximum, then passes through zero and to a negative value, so that you get a variable voltage throughout each cycle. Direct current is like the current from a battery; it is continuous at all times.

Q. And that is necessary?

A. It is necessary for the exciters, yes. All the exciters have to be of that character.

Q. Does the exciter produce this electrical energy, the direct current?

A. Well, it aids in producing it, because it supplies the magnetic field through which the coils of the generator have to cut in order to produce the commercial alternating current. It is an indirect aid; it doesn't produce the power for sale at all, I mean for use.

(Testimony of J. C. Stevens.)

Q. Now, what about the—how was this turbine driven, the exciter?

A. Well, there is a little water wheel turbine down on a [565] long shaft, down below.

Q. Is there a gate in the fore-bay through which the water goes to the turbine on this exciter?

A. Yes.

Q. And where was that located in the fore-bay?

A. Well, that would be in the fore-bay, that is, in the upper side of the power house, the upper end of the penstock. I might say, then, the second unit as I described is a General Electric unit, General Electric generator with a propellor type of wheel, which is a wheel shaped something like the fins of a wind-mill, you might say, different from the ordinary Francis type of wheel, and both units were running when I was there in September, but only this General Electric unit was running when I was there in January.

Q. Can you give us the kind and capacity of these two generators, Mr. Stevens?

A. The rated capacity of the old generator—I've forgotten whether they call that number 1 or number 2——

Q. That is number 1.

A. Number 1, I think it is the old Allis Chalmers generator with the triple turbine water wheel there.

Q. What is the name of that type of water wheel?

A. Well, that is a Francis wheel, taken from the name of the early inventor 'way back in the 60's

(Testimony of J. C. Stevens.)

sometime, I've [566] forgotten just when it was, James B. Francis. In entering that type of turbine the water enters through the shaft and then is turned to a direction following, that is, in the direction the water goes out peripherally from the direction of rotation of the machine. The blades are rather long, and they're all curved out in that direction, so as the water enters them, it is thrown backwards trailing the direction of the flow. The propellor type turbine is more on the nature of a fin on a windmill.

Q. Or the screw on a ship.

A. Yes, or the screw on a ship, yes. It has considerably higher speed, that is, you can get higher speed out of that type of unit under low heads than you would with a Francis type. Did I cover your question?

A. Yes. Mr. Stevens, have you made cost studies of the various items that comprise the power system and the irrigation system in the District? A. Yes, sir.

Q. And that is the properties that are involved here? A. Yes.

Q. Have you also from your examination formed an opinion as to the depreciation of these various items? A. Yes, sir.

Q. And you have had information as to the power production, [567] have you, of the power plant for the last year of District operation?

A. 1942, yes.

(Testimony of J. C. Stevens.)

Q. And did you examine the power canal?

A. Yes.

Q. And have you seen the information or data concerning the flow of the river at or near Priest Rapids?

A. You mean at Trinidad?

Q. Yes.

A. I've seen the records. I haven't examined them in detail.

Q. Do you know approximately, Mr. Stevens, how much water is required to operate the two units in the power plant at capacity?

A. I don't know the exact quantity.

Q. Do you know whether or not there is sufficient water in the river to do it?

A. Not at this time.

Q. Pardon?

A. Not when the river's low, not when the Columbia River's low.

Q. Why?

A. Well, they can't get enough water into the canal to operate both units.

Q. Well, is there enough water in the river?

A. Oh, plenty. Minimum flow there I think, of all time [568] record, is about 21,000 cubic feet per second, and this is a matter of 1000, more or less, required for this unit.

Q. You say about 2200?

A. I say, the flow in the Columbia River, minimum, I think the minimum flow for all years of record is about 21,000 cubic feet per second, and the flow required for this is a matter of a couple of thousand or less.

(Testimony of J. C. Stevens.)

Q. A couple of thousand second feet?

A. That's right.

Q. So it would be about one-tenth of the lowest recorded flow of water in the Columbia?

A. That's right.

Q. At what point?

A. At this point. Of course, it was not recorded at this point, but the record at Trinidad, there is almost no intervening—I should say that the flow at this point is virtually the same as that at Trinidad, and I think 21,000 minimum is the minimum given by the Army Engineers in their report on this large Priest Rapids development.

Q. How is that report generally referred to?

A. Well, it is called the "308" report. It was the report that authorized the Army Engineers all over the country, I think the resolution was number 308, joint resolution of Congress, if I remember rightly, and the work that [569] they did in those years took that name, 308 studies and 308 reports, done by the Army Engineers in every district in the United States. It was an inventory or appraisal of the water resources of the country with respect to power and flood control and irrigation and other purposes, and on the Columbia River they made exhaustive studies both in the Portland District Office and Seattle District Office, and outlined quite a large number of projects, including this large development at Priest Rapids. They outlined two projects there, one what they called a low dam, and

(Testimony of J. C. Stevens.)

the other a high dam. The low dam I think would back water up to Vantage, and the high dam clear up to Rock Island.

Mr. Ramsey: I object to going into the matter of proposed dams at this site that have never been carried through. I can't see where it has anything to do with this particular case.

The Court: Well, he's already answered the last question. Let's have another one, and then we can decide what to do in the future.

Direct Examination
(Continued)

Q. Have you ever acted as a consultant with the Army Engineers? A. Yes.

Q. Did you do any work on the 308 report?

A. Not on the Columbia River. I did some of the work on the Willamette Basin. I am now on the consulting board for the Army Engineers for the Portland District, which begins at the mouth of the Snake River and extends down to the mouth of the Columbia.

Q. Did you prepare, Mr. Stevens, a statement of or inventory of the property, with the aid of Mr. Tinling's list, Exhibit 9?

A. Yes, and some of the quantities that are in Mr. Hall's report.

Q. And some of the quantities in Mr. Hall's report? A. Yes.

Q. And those were figures testified to yesterday or today by Mr. Hall and Mr. Tinling, were they?

A. Yes, sir.

(Testimony of J. C. Stevens.)

Q. Have you checked the prices yourself on a number of items?

A. I did not check—on a number of items, yes, I have, on the major items I have, but I have not used the prices; I've used my own prices.

Q. You've used your own prices?

A. Yes, for those major items.

Q. Have you also prepared a statement of your opinion of the depreciated value of these properties?

A. I have.

Mr. Powell: May this be marked, your Honor?

(Whereupon, cost of reproduction less depreciation, by J. C. Stevens, was marked Defendant's Exhibit No. 15 for identification).

Direct Examination

(Continued)

Q. I notice your name does not appear on it, Mr. Stevens. This is, however, prepared by you?

A. Yes, it is.

Q. Mr. Stevens, I hand you Defendant's Identification 15, and will ask you if you know what it is?

A. This is a photostatic copy of the reproduction cost less depreciation which I have prepared of the power plant, the pumping plant, and the irrigation system.

Q. And how many sheets does it contain?

A. It contains three sheets. After the reproduction cost and reproduction cost less depreciation for the entire project was prepared, I made a segregation of the reproduction cost less depreciation

(Testimony of J. C. Stevens.)

between the power plant and the irrigation system, and that is on the third sheet.

Q. That is, you were advised about the necessity of so dividing it after you arrived here?

A. Yes.

Q. When was this prepared, Mr. Stevens?

A. This was prepared in Portland just before I came up here on the 10th, I think, or 11th, shortly before then. [572]

Q. Are the figures that are contained on the typewritten sheet, which is sheet 3, all contained within the first two sheets, the photostatic sheets?

A. They are.

Q. And why have you prepared sheet 3?

A. Just to show the segregation of the power plant from the irrigation system and pumping plant.

Q. You have included in the irrigation system what items, Mr. Stevens?

A. Included the lands and rights of way and the transmission line from Coyote to Coyote Junction, the Coyote Pumping Plant and substation, all of the facilities there for pumping, the canals and distribution system, interest during construction, and overhead items on each one of those items.

Q. And is the balance of the property included in the power?

A. And the remainder of it is included in the power plant facilities.

Q. Now, Mr. Stevens, have you made any determination as to—or have you divided any part of

(Testimony of J. C. Stevens.)

the power plant value or allocated any portion of it to the irrigation system?

A. No, I have not.

Q. That does not appear in those sheets?

A. It does not appear in this.

Q. Would you mind looking, then, at page 1 of defendant's [573] identification 15? What are the three columns on the right hand side?

A. One is the reproduction cost new as of 1943. The next column is the condition in per cent, that is, it is the condition obtained from my examination of the property.

Q. Who determined it?

A. I did, by an examination of the equipment and property.

Q. What is the third column?

A. The third column is the reproduction cost less the depreciation. Depreciation would be represented by multiplying the reproduction cost new by the condition in per cent.

Q. I see; or, if the middle column of the three showed 50, that would mean that in your opinion that certain articles had depreciated 50 per cent?

A. That is right.

Q. And if the column shows 40, what will that mean?

A. It would show that the condition of the plant was 40 per cent of a new plant or a new unit. Some elements are not depreciated at all, and some of them have depreciation all the way from 30 per cent on up.

(Testimony of J. C. Stevens.)

Q. What I have reference to, Mr. Stevens, is that the percentage that is shown in the column does not represent the amount that has been taken off, but the amount that remains? [574]

A. The amount that remains, that is right.

Q. And the difference between the percentage shown and 100 is the amount of depreciation?

A. That would be the amount of depreciation that the particular element had sustained in excess of normal maintenance. I used the term "depreciation" broadly; it may mean obsolescence, or loss of utilitarian value.

Q. There are various kinds of methods of figuring depreciation, are there not? A. Yes.

Q. How have you figured your depreciation?

A. Well, this would be what we call a "straight line" basis.

Q. And what is that?

A. Well, it isn't even—it is just—depreciation is a matter of physical fact, not an accounting procedure or expedient at all. It is a physical fact, and the condition of the property can be determined by examination of it, and this condition as set up here shows the value still remaining in the property in excess of what might have been added to it from time to time by just normal maintenance. Now, I haven't used, really, a straight line depreciation at all. Straight line depreciation is based, usually you estimate the life of the property and you find out how many years old it is, and you make a proportion of its life, that is, its used period with its [575]

(Testimony of J. C. Stevens.)

estimated life, but this is a little bit different. It avoids that expediency by simply setting down the condition of the property which you determine by your own examination of the property, and then multiplying your reproduction cost new by that per cent, to obtain the amount remaining, the value of the property.

Q. Now, since you did not see the property in 1943, have you compared the inventory prepared by Mr. Tinling and by Mr. Hall with the inventory as shown on identification 15?

A. Yes. Well, this is made up from the quantities that were in those two reports.

Q. And that is, by two reports you mean Exhibits 9 and 11?

A. I think so, in general. You see, I did not have Exhibits 9 and 11 in my office, but I had what purported—I had the inventory that Mr. Tinling had made, and also the material inventory that Mr. Hall has made. Now, whether the quantities which I had are identical with those, there might be some slight variation, but nothing of any consequence.

Q. When I say Exhibits 9 and 11, Mr. Stevens, I refer to the exhibits which I am now showing to you.

A. One is by Hall, and the other by Tinling.

Q. Yes.

A. Yes, I think this is in substantial agreement with those.

Mr. Powell: At this time, your Honor, we offer Defendant's Identification 15 in evidence.

(Testimony of J. C. Stevens.)

Mr. Ramsey: Objected to, if the Court please, for the reason it appears that the testimony of the witness as to values is in part based upon acceptance by him of estimates of other witnesses as to amounts, and that is particularly true of excavations and the materials used in the structures. In other words, it does not represent his own opinion, but it represents his opinion based upon the opinion of other persons as to a portion of the items taken into consideration in arriving at the total.

The Court: The jury may retire now for the afternoon recess.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Cheadle: Could we have the objection read back?

(Whereupon, the reporter read Mr. Ramsey's last previous objection.)

The Court: It is the court's view that one witness make take an inventory, testify to it, and have it identified in court here, and then another witness place values on the property based on that inventory. That is what's been done here, as I understand it, and that is [577] the practice that I have followed, and I understand other judges have too, in these P.U.D. cases. Am I correct here in my interpretation of this witness' testimony, that the valuations are his own; I say, in valuations, his opinion or estimate of the reproduction cost new is

(Testimony of J. C. Stevens.)

his own estimate, or is it based in part upon the valuation placed on the property by Mr. Hall and Mr. Tinling?

Mr. Powell: I understand that the estimates of reproduction cost new are his own; that he has made a study himself of those. Is that correct, Mr. Stevens?

Witness: It is correct as to all the major items.

Now, I take a view of the electrical items, take the switch board, for example, a very intricate thing, and I did not undertake to do more than spot check his estimate, and I took his value, that is, reproduction cost, as mine, but I depreciate, which he did not do.

The Court: Well, there are two things involved here. One is the reproduction cost new upon this property. The other is the depreciation that should be put upon that reproduction cost new. They're two separate and distinct things. If the exhibit is offered for both the purpose of showing what it would cost to reproduce this property new, and also his opinion as to how much it has depreciated from new cost or value, then it seems to me the estimate should be his own, and not that of [578] someone else. I think if there are exceptions here, those exceptions might be brought out so that the testimony would show just what part of this is his own valuation, and what is some other witnesses'. I notice at the top of this statement it says "Valuation based on report by G. D. Hall, also inventory and valuation of electrical equipment by H. B.

(Testimony of J. C. Stevens.)

Tinling," so that from the title it would seem to be based in part, at least, upon the valuation of other witnesses, and it seems to me the jury would be entitled to know how much is his own testimony and the testimony of some other witness as to reproduction cost new. Also, I don't like that word "valuation" because the valuation is the cash market value of the property. The reproduction cost new, or the reproduction cost new less depreciation, is only to aid the jury in arriving at the value. It is only one element of value, but it isn't direct evidence of value. It isn't valuation, strictly, it is a reproduction cost new study, less depreciation.

Mr. Cheadle: With regard to that last point you have mentioned, it is not submitted by the defendants as a valuation; it is submitted as evidence of one of the elements which would be considered by an opinion witness or by an informed buyer in arriving at value, so it is not submitted as a measure of value in and of itself. [579]

The Court: But the point I'm making is that this goes to the jury if it is admitted as evidence, and you call it a valuation in the thing itself. That is the thing I was objecting to, the use of the term "valuation." They will say "This is a valuation" and they will be very likely to say "Well, that is what he thinks is the value of this property." That could be stricken off of there, of course, or changed. Do you have anything further to say, Mr. Ramsey?

Mr. Ramsey: I have further grounds for objection, if the Court please.

The Court: All right.

(Testimony of J. C. Stevens.)

Mr. Ramsey: It is further objected to for the reason this is a demonstration of the very thing the Court mentioned at the beginning of the trial. We are beginning to get now a summation of one witness after another, compiled and submitted to the jury as a separate exhibit and document. In other words, by this method, every witness is corroborating everything every other witness testified to; he's adopting it, embodying it as a part of his testimony. We start on the assumption by this witness that everything testified to by two other witnesses is correct and right, and he's accepting it in toto and he now adopts it as his own. There's simply no getting away from it; we're placing in the hands of the jury a tabulation of what each witness testifies to, in printed form, then we're piling them up, and they're going to the jury; this is a valuation of Mr. Tinling, and then pick up the next one, and this witness has adopted it, and says Mr. Tinling is correct in every detail, and here's another witness that has adopted Mr. Tinling and Mr. Hall and Mr. Stevens' statements as being correct in every detail, and going on from there, I think it is plain what the build-up is, and what the effect must be on the jury. I am objecting, I have objected, and I am going to continue to object to the admission of these things in evidence, because they are simply a tabulation in written form of each of the witness' testimony, and we're now beginning to re-tabulate and bring together and accept by each successive witness all the matters testified to by the former witness, with-

(Testimony of J. C. Stevens.)

out going into it in the cross examination at all. They're standing independent, things that have never been touched on on direct or cross, and now we're preparing to send them out in the jury room as exhibits with the jury for their deliberation.

The Court: Well, have followed the practice of admitting these summaries of studies of experts in these cases. Whether I am right or wrong about that, it is too late to reform now until the Circuit Court of Appeals [581] reforms me. I think an expert may testify and base his opinion on the testimony of other witnesses. An expert can sit through a trial and in some cases testify wholly on the testimony he has heard, so the view I take of it will permit a witness to take an inventory by another witness and testify what his opinion is of the reproduction cost new and the reproduction cost new less depreciation; but I do object to having one witness adopt the opinion of some other witness in a written statement of this kind, and this seems to have some of that in it, at least as to the switch board; I don't know how many other items. I think as to those items he can testify his opinion of depreciation, but I shouldn't think he would be permitted to adopt the opinion of some other witness as to what is the cost of reproduction, and then put it down in here as his own, unless he has exercised independent judgment on it, as an expert, and happens to adopt the other man's figures, but he hasn't done that, at least as to the switch board.

(Testimony of J. C. Stevens.)

Mr. Cheadle: I am not sure what I am about to say is in response to the point you just made. I believe it does have some bearing on it. An opinion witness on the valuation of a piece of real property, residential or farm, being condemned, frequently does, as government witnesses did in these cases, go to the county recorder's [582] office, or they may go to Farm Credit Administration statistics on sales, and they will get what they call records of the comparable sales, or perhaps records of farm sales in general in the area, and on the basis of that they will form their opinion. Now, with regard to electrical equipment, that is, the group of properties and the pumping equipment. Those are the groups of properties which were priced, let's say, by Mr. Tinling. As a matter of fact, the only way a contractor or the only way an owner or builder can determine what the prices of those items are is to refer to catalogs of the manufacturers, to refer to catalogs of distributors or to refer to indices that are published every several months of every year by such magazines as Western Construction Engineers, and electrical engineer magazines; the Associated General Contractors of America prepare their own indices; the Bureau of Reclamation does likewise, and all of those are exchanged. Now, as a practical matter, I think my statement is directed to the practical as well as the legal, as a practical matter, any witness pricing the electrical equipment and the pumping equipment would have to refer to that type of information, and would have to adopt

(Testimony of J. C. Stevens.)

some of it, or consider it as a whole, and say, from that information compiled by others and not by him, "I conclude that this is the reproduction cost of an [583] Allis Chalmers unit"; and I believe your Honor will note upon this identification 15 that it is the items of equipment, manufactured equipment, priced by Mr. Tinling, which to some extent, I believe not altogether, to some extent, were adopted by this witness; not the ultimate price put on by Mr. Tinling. This witness believes those items should be depreciated by what he calls condition per cent, but he is in effect adopting no more, your Honor, than manufacturers' price on those items.

On the items testified to by Mr. Hall I believe this witness has made his own independent investigations of unit prices in comparable contracts let in 1943, and has reached his own conclusions as to what it would cost to excavate anew that canal, to build anew that concrete power plant, and I may say so far as he is adopting quantities estimated by Mr. Hall, that is what every contractor is obliged to do when he bids on a job advertised by the Bureau of Reclamation, the Army Engineers, or any city. They advertise specifications, with quantities; the contractor must adopt those and then form his own judgment as to what he can build those for per unit. I believe that with that explanation, in part practical, your Honor, what this witness proposes to put in here as merely an element which he will have considered in arriving

(Testimony of J. C. Stevens.)

at his ultimate opinion of value is proper, subject to striking out the word "valuation" which is misleading.

Mr. Ramsey: I need do nothing more than point out the fact that so far as the situation counsel referred to where government witnesses testify as to value of lands, that testimony is predicated upon the study of public records, not someone else's statement. Furthermore, those witnesses do not come on the stand to testify, nor put a tabulation in the hands of the jury, of what they allege to be the actual values paid in sales between parties. They come in and give their independent opinion as to the value of that property. True enough, on cross examination if they are asked how they formed those opinions, they will no doubt answer, by studying all available public records as to sales in the area, but they still don't tabulate those sales, set out all the items that have to do with those sales, print them and pass them out and in effect tell the jury "I am testifying as a witness that as to this sale the price paid was so much." They don't do anything of that sort.

Now, it is all very well to say "Well, this value proposition, it is just a standard proposition everybody goes to" but I am going to call the Court's attention to one thing, just one item, generating unit number 1. In Mr. Tinling's breakdown, which is Exhibit number 9, I believe, generating unit number 1 totals 724,000 plus [585] \$32,000 plus \$5000, which is \$61,000.00. Now, Mr. Tinling says

(Testimony of J. C. Stevens.)

he's in the electrical supply business, and that the cost of those items new totals \$61,000.00. In the exhibit just offered this witness has placed upon generating unit number 1 a reproduction cost of \$75,000.00. Now, it is all right for counsel to say "Well, they come from the same figure, because they go to the same source to get them; if this witness looked it up independently they would come back with the same figure" but there is an example of the fact where he did not adopt the figure of the preceding witness, and we have a spread of \$14,000.00 on a single item as to reproduction cost new.

The Court: I take the view here, as I have indicated, that this is admissible as a summary of the testimony of this witness as to his opinion of the reproduction cost new and as to the depreciation that should be computed on this property. I think I would be inclined to admit the exhibit if it is brought out what part of these reproduction cost new pricings are his and what are based upon some other witness' estimates, so that the jury may have that before them.

Mr. Cheadle: May I inquire of your Honor, so that the point you raised earlier will not be ignored, do you want the word "valuation" stricken from the top, at least before any copies are handed to the jury? It [586] appears twice. We want to be scrupulous in carrying that point out, and if your Honor feels that way, I suggest that the exhibit might be used for the purpose of testimony, but no copies handed to the jury until those words are stricken, or if necessary that top cut off.

(Testimony of J. C. Stevens.)

The Court: I think it could be stricken out so that the word could not be read. I do object to the word "valuation." I think it is a little misleading. I know what is intended, but it is capable of construction as referring to the valuation, which is market value, here.

Mr. Powell: We don't have copies of the third sheet prepared, so that these copies we have for the jury will not have the third sheet on them; that is just the segregation.

The Court: Oh, I see, yes. Well, you won't have any testimony directly referring to that, I suppose. The court will recess now. I would like to see counsel in chambers.

(Short recess)

(All parties present as before.)

Mr. Ramsey: Before returning the jury, may I interpose a further objection to the admission of defendant's identification number 15?

The Court: Yes. [587]

Mr. Ramsey: Further objection is made that there is contained in the exhibit a statement of the estimated replacement cost as well as depreciated cost of the power line of the Priest Rapids Irrigation District from the power plant at Priest Rapids to the junction at Coyote Rapids; that for the reason that the government contends that even under the Court's theory of this case, the line having been built by the District and primarily and solely for the use of the district in the transmission

of its own power to its own pumping plant, that the fact that at a later date that line was used for the transmission of surplus power and delivered from the line to the Pacific Power and Light does not change the fact that the line in its entirety is a solely irrigation asset.

The Court: I believe the Court reserved a ruling on the admission of this exhibit until some further testimony was taken. However, the record may show Mr. Ramsey's objection. I presume when it is re-offered again Mr. Ramsey's objection will apply.

Mr. Ramsey: I ask that it be considered that the same objection is interposed when the exhibit is offered again.

Mr. Cheadle: In response to this last objection, your Honor, we merely wish to state that the transmission line from the power plant to Coyote Junction has been [588] used for years for commercial power purposes, and we have made the segregation of the Irrigation District's properties represented by the typewritten sheet attached to this identification 15, the first two pages of which are photostatted, merely for the purpose of segregating the amount shown on the photostatic pages in conformance with the request of the Court, made in view of the so-called Schwellenbach Formula, but we do respectfully submit that the transmission line from the power plant to Coyote Junction, under the Schwellenbach Formula, must be treated as the rest of the power properties allocated under that

formula to irrigation and to power in accordance with the requirements of irrigation, when the government took the property in 1943.

The Court: I might say that is the view the court takes of it on that portion of the objection. Will you call in the jury then?

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

J. C. STEVENS

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Do you have a copy of identification 15, Mr. Stevens? A. No, I have not. [589]

Q. Mr. Stevens, as to a portion of the items appearing as reproduction cost on the exhibit, did you take the figure of Mr. Tinling?

A. For three items only.

Q. For three items; which items are they, Mr. Stevens?

A. The switch board, seven panels, \$4260.00; the——

Q. Just a minute; that is the item that appears—— A. On the first page.

Q. It is the sixth item from the subtotal?

(Testimony of J. C. Stevens.)

A. Near the bottom of that item IV, the item marked in item IV, generating equipment, switch board, seven panel.

Q. And you have in parenthesis——

A. "See Tinling list". That was the inventory which he had made. Instead of listing them all in here, I just referred to his list. The switch board is made up of many elements, many parts.

Q. And what is the next item, Mr. Stevens?

A. Next item is the traveling crane, second item below that, 10-ton, the one in the power house, \$3600.00.

Q. And what other item?

A. The other item is on the next page, under Roman V, the spare coils for the transformer, the last item, \$1700.00. Now, I adopted his figures as my figures because those items were all frozen at that time anyhow, since July, 1941, by the O.P.A., and the only difference in cost [590] would be a little cost of installation labor involved.

Q. Was labor also frozen at that time?

A. No, sir.

Q. Wasn't the Wage Stabilization——

A. There was a Wage Stabilization Act, but in my experience wages wasn't frozen—too many ways to get around it, but I don't think there was any change in that.

Q. Have you had any experience, Mr. Stevens, in the cost or valuation of switch board panels such as this?

(Testimony of J. C. Stevens.)

A. Not in minute detail. We've designed—of course, the panels, the switch board, in any power plant, or any equipment that we've designed in our office, we have had some electrical engineers employed, and we have them make those panels. I did not do it personally, myself. It was all done under my direction.

Q. It was what?

A. All done under my direction.

Q. Can you say whether or not the item four, switch board, the seven panels, appears to be in order for 1943?

A. Yes, sir.

Q. What about the travelling crane?

A. The travelling crane, I think that is a fair price for that crane at that time.

Q. Now, you mentioned the switch board item under generating equipment. What about the switch board item under pumping [591] equipment?

A. I don't recall whether that—

Q. Did you price that switch board item?

A. I don't remember whether I did or not. I would like to compare that with the Tinling list, because I don't recall whether that was priced independently or not.

Q. I'll hand you, if I may, Exhibit 9, page 9, Mr. Stevens.

A. Yes, I used the same price there that he did. I'm sorry that I did not have that listed before.

Q. Then there are four items, is that correct?

A. Yes, as far as I'm able to determine; as far as I can tell now, only those four items.

(Testimony of J. C. Stevens.)

Q. And what about the price of the switch board panel in the pumping station, does that item of \$3800.00 appear to be in line for 1943?

A. Yes, I think so.

Q. What about the crane in the pumping plant, Mr. Stevens?

A. No, I did not use the same price that he had.

Q. You have a different price on that?

A. Yes.

Q. How did you arrive at your price?

A. I used the same price that I did for the crane in the power plant, because they're identical.

Q. And you got the price of the crane in the power plant from Mr. Tinling? [592]

A. I got that from Mr. Tinling, and I used the same price on that in the pumping station, but he used a different price.

Q. Then we should check that also.

A. No, not at the pumping station.

Q. Then how did you arrive at that?

A. The crane in the pumping station I priced the same as the one in the power plant, but Mr. Tinling did not.

Q. How did you arrive at your value for the crane in the pumping station?

A. Well, I took Mr. Tinling's figure as being a fair price for that crane installed in the pumping station.

Q. Then the figure you have for the crane in the pumping station is also Mr. Tinling's figure, is it not?

(Testimony of J. C. Stevens.)

A. No, Mr. Tinling's figure for the crane in the pumping station is \$3200.00, and mine is \$3600.00.

Q. And what about the coils, the item on the top of page 2?

A. Those are the spare coils for the transformer. They're still boxed there, and they're new, in the Coyote Pumping Plant, and there's been no work done on them. That was the standard price for those coils at that time. I used the same price Mr. Tinling did.

Q. Except for the items, then, that you have mentioned, the four or five items, you made your own independent investigation of cost price?

A. That is right. [593]

Mr. Powell: We would like to renew the offer, your Honor.

Mr. Ramsey: The same objections are interposed that were interposed at the time of the first offer.

The Court: The objection will be overruled, and the defendant's exhibit 15 admitted.

Mr. Ramsey: Exception, if the Court please.

The Court: Exception will be allowed.

(Whereupon, Defendant's Exhibit No. 15 for identification was admitted in evidence.)

Mr. Ramsey: To the furnishing of copies of this exhibit to the jury, that is, furnishing copies of the exhibit to each of the jurors, the same objection is interposed as was interposed to the placing of former exhibits in the hands of the jurors. It is further objected that this particular exhibit is not

(Testimony of J. C. Stevens.)

identical, as the so-called copy being handed to the jury is not identical with the exhibit.

The Court: The record should show that on the copies of this exhibit the wording between the line "Priest Rapids Irrigation District" and the line which reads "Items, description, unit, quantity" and so on, has been deleted and stricken out, and it is understood that that wording will be stricken out on the original by the Clerk. The admission was with that understanding. [594]

Mr. Ramsey: I don't know whether the Court understood the basis of my last objection; it is that to the exhibit as admitted there is a third page affixed. As to the copies now being handed to the jury, it consists of only two pages, without any third page being affixed, so that it is not identical with the exhibit as admitted.

Mr. Powell: May I state for the record that the third page, as I understood the witness's testimony, is merely a re-arrangement of the figures that appear on the first two pages, and therefore could add nothing to the exhibit except to re-arrange the original figures.

The Court: Yes, the objection will be overruled. I assume no testimony will be introduced while the jury has this, relating to the third page.

(Whereupon, the Clerk distributed copies of Defendant's Exhibit No. 15 to the jury and one alternate juror.)

(Testimony of J. C. Stevens.)

Direct Examination

(Continued)

Q. Mr. Stevens, I believe you have a copy of defendant's exhibit number 15? A. Yes.

Q. Referring to the lands, and principally item I, what is that?

A. Well, that includes all the lands and rights of way necessary for the construction of the project new as of 1943. [595]

Q. Have you depreciated that item?

A. Beg pardon?

Q. Has that item been depreciated?

A. No; \$5,000.00.

Q. Would you mind explaining the next section, the power canal?

A. The next is the power canal, 222,000 cubic yards, at \$1.00, gives \$222,000.00, and the condition is 100 per cent, leaving the same item over in the reproduction cost less depreciation. The spillway and crib dam and the power canal, the original cost new, \$3600.00, and depreciated 50 per cent, makes reproduction less depreciation \$1800.00; now, the sum of those items above in item II are shown together, overhead items, \$33,800, which is depreciated at the same rate in the sub-total, would be 99 per cent, then you get a sum of the total of item II, \$259,400 new, and \$257,400.00 on a 99 per cent condition.

Q. Mr. Hall estimated the cost of excavation at less than \$1.00 a cubic yard? A. Yes.

(Testimony of J. C. Stevens.)

Q. Why have you taken a dollar a cubic yard for the cost of excavation?

A. Well, I think that is probably what one would have to pay for that work in 1943? That is my best judgment as to [596] what it would cost.

Q. What would be the difference in cost between April 1 and October 1, 1943?

A. Nothing to speak of.

Q. You would say none?

A. I would say no difference.

Q. Now, what do you base the figure on, of \$1.00 per cubic yard?

A. Well, I base it on records that we had in the office of work, contract work, that was being done at various times in this vicinity, and general knowledge as to the cost of work about that time.

Q. Is there any publication that is used by engineers in fixing their bid prices?

A. Yes, they—well, Western Construction News is a paper that is published in San Francisco. It comes out about 25, 24 issues a year, and it has, every issue tabulates the bids that have been opened on public works during the month, nearly all of them, for this western coast, the Pacific coast, and of course, bid prices vary, have quite a variety, depending on conditions, but they are an aid in arriving at a judgment as to what this excavation might be, coupled with your own general knowledge of the situation.

Q. Do you have the copies of that magazine for 1943? [597]

A. Yes, I have one.

(Testimony of J. C. Stevens.)

Q. And is it here in the courtroom?

A. Yes, back here, if I may——

Mr. Ramsey: May I ask what the purpose of counsel is in this matter? Is he going to offer this magazine as a witness?

Mr. Powell: Well, this perhaps may be more correctly cross examination, if your Honor please, but I merely wanted to point out what particular jobs the construction work was done on.

The Court: As a basis for his estimate?

Mr. Powell: As a basis for his estimate of the unit price.

The Court: I don't believe that that would be admissible on direct examination. I will hear you on that, however, if you want to be heard in the absence of the jury.

Mr. Powell: Well, I won't press it now, your Honor. I'll wait.

The Court: All right.

Direct Examination

(Continued)

Q. Now, what item, Mr. Stevens, have you—how do you arrive at your item for overhead?

A. Well, that is approximately 15 per cent of the subtotal.

Q. What is that made up of? [598]

A. Well, that includes engineering, legal expense, office equipment and expenses and services, stenographic help, travelling expenses, automobile upkeep, and all, and the salary of management and

(Testimony of J. C. Stevens.)

staff and all other expenses that would be, that are, of a general nature, that would apply to the entire project under way.

Mr. Ramsey: Now, if the Court please, I am going to move to have the witness's testimony as to this item stricken and the jury instructed to disregard the testimony and disregard the item as it appears in the compilation of his testimony, upon the grounds and for the reason that these items are not proper items to be added to a reconstruction cost. The question that is presented there, and purely the question there, is the cost of reconstruction. It does not embrace nor include all of these various items that the witness has testified he's added 15 per cent to his cost charges upon. I might point out that if my compilation is correct this amounts in the total to \$142,265.00 added to the estimated cost of replacement as of the date of taking. To that has been added an additional item of interest during the period of construction amounting to \$31,000.00 in the total tabulation, and I do earnestly submit to the Court that if we're to proceed in this case on the basis of reproduction cost less depreciation, that we're entitled [599] to insist those items be held down to actual reproduction cost, and not all the items that an engineer estimating the cost of a project might tack on to add on to his bill.

The Court: Objection will be overruled.

Mr. Ramsey: Exception.

The Court: Exception allowed.

(Testimony of J. C. Stevens.)

Direct Examination

(Continued)

Q. Why, Mr. Stevens, have you depreciated the crib dam?

A. Well, part of it's been washed away. The rest of it is exposed part of the time. Some of the timbers are beginning to rot, and I judge, my judgment is that it probably should be depreciated about 50 per cent.

Q. All right; now, going down to the next item, generating plant, you have an item of excavation of rock, \$5.50?

A. That is for the power house, yes.

Q. And why is that so high, your excavation, above his, only \$1.00?

A. Well, the excavation above is unclarified, some rock, some loose rock, some soil; this is all solid rock, and it is the foundation base of the power house. It has to be trimmed pretty closely to exact lines.

Q. How is that done?

A. Well, it is done by either hand drilling or drilling by compressed air, in small quantities, I mean in small holes, and shooting cautiously and carefully all over, [600] which of course costs money.

Q. And is it necessary to go down below the water level?

A. At this place, I wasn't there when it was constructed, but it seems to me perfectly obvious

(Testimony of J. C. Stevens.)

that they would have to do some coffer damming and possibly some pumping while this work was under way.

Q. What about the next item?

A. The next item is re-enforced concrete. I fixed a price of \$50.00 per yard on that, which includes the re-enforcing; that is re-enforced concrete.

Q. Are contracts taken on that basis?

A. Yes, sometimes. This is the total item for the structure, power house structure. It includes all of the windows and sash and trim, re-enforcement, roof, all the other things that are not specifically set forth. It has all been lumped into the cost of the concrete.

Q. So that the record may show, Mr. Stevens, what is the item you have included for excavation, new and depreciated?

A. The excavation cost \$53,900.00 new; I depreciated that 90 per cent, leaving \$48,500.00 for the depreciated cost.

Q. You mean you depreciated it 10 per cent, don't you?

A. Yes, I mean I set up a 90 per cent condition.

Q. Why did you depreciate the structure excavation at 10 per cent, whereas you did not depreciate the excavation for the canal? [601]

A. Well, the power house itself is a concrete structure that has some little element of depreciation in it. It may last for a long time, but there is an element of depreciation.

Q. I'm talking about the excavation.

(Testimony of J. C. Stevens.)

A. And when you depreciate the power house you depreciate the excavation on which it is constructed at the same time. If you were to replace the power house you would not very likely replace it on the same excavation.

Q. Now, what item have you included for the reproduction cost and the depreciated cost of the power house concrete?

A. The cost new of the power house, \$145,000.00, which is depreciated on a 90 per cent condition, leaving \$130,500.

Q. What are the next items?

A. The next items are the gates. There's four of them on the fore-bay, I mean at the head of the penstocks, and there's also some old gates in the tail race at the outlet of the tubes, and they're not used now, although they could be used and the equipment is there. I have set an item of a thousand dollars apiece for those gates, making \$4,000.00, which I have depreciated under a 30 per cent condition, leaving a depreciated cost of \$1200.00.

Q. And what about the next two items?

A. Now, the bar screens are estimated at \$3600.00, with a condition of 40 per cent, leaving a depreciated value of [602] \$1440.00. The operators' cottages, there's three of them there, and the price of \$5500.00 includes the wiring and transformers that were required for the cottages, and I've set a condition of 60 per cent for those, leaving \$3300.00 as the depreciated value. The subtotal is \$212,000.00 new, and \$184,940.00 depreciated,

(Testimony of J. C. Stevens.)

which gives an average condition of 88 per cent, and to that has been added the overhead of approximately 15 per cent, in round figures, leaving a total for item 3, \$243,800.00 new, and depreciated on an average condition of 88 per cent.

The Court: That seems to be a good place to stop. We'll adjourn now until 10 o'clock tomorrow morning.

(Whereupon, the court took a recess in this case until Friday, February 14, 1947, at 10 o'clock a.m.)

Yakima, Washington, February 14, 1947

10 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Cheadle: If the Court please, I thought before the jury was called in I would hand to your Honor an order providing for the jury view.

The Court: Have you seen this?

Mr. Ramsey: Yes, your Honor.

Mr. Cheadle: Mr. Ramsey has found it satisfactory. We have not yet signed it for counsel. We suggest, your Honor, that it should be dated February 10th.

The Court: Yes, I think so.

Mr. Ramsey: I tied up government funds on that. I would like to have the order support it of that date.

The Court: Yes. I suggest that you sign it.

Mr. Cheadle: We will immediately, and hand it to the Clerk.

The Court: This thought occurred to me after we had our conference last night about the other case. I wonder if it wouldn't be advisable, rather than to stipulate [605] that the court take the case involving the lands owned by the district under advisement, that you stipulate that that action be held in abeyance in its present status until the determination on appeal or final determination of this case. My thought in that is that that would enable you to bring in additional testimony on either side. As I recall, the testimony wasn't closed in that case, and either side was to have the privilege of bringing in additional testimony if they so desired, and it seems to me it would be desirable to keep it in that condition rather than have it closed and taken under advisement by the court. You don't know what would develop on appeal in this case, and either side or both might want to come in with testimony that is rendered pertinent or desirable.

Mr. Powell: I might state that Mr. Fletcher has communicated with all the directors, and they have consented to the continuance of the Richland case.

The Court: Yes; all right.

Mr. Cheadle: We will prepare an order accordingly, then, and present it Monday.

Mr. Powell: We have prepared the segregations of Exhibits 9 and 11. I think Mr. Ramsey has copies of the segregations as prepared, and if they are satisfactory to counsel they may be attached to the exhibits, and it is [606] agreeable with us that the Court advise the jury what they are and what they're for without putting any testimony in with reference to them, because they contain no new figures, but just the segregation of the amounts, that is, the total amounts.

Mr. Ramsey: The same general objection is interposed as to the original exhibits, of which these are a summary.

The Court: Yes, that will be understood, and the objection will be overruled, and the government allowed an exception. You may bring in the jury, then. These may be considered as offered as a part of these exhibits, and to be attached to them.

Mr. Powell: Yes, your Honor.

The Court: I think that would perhaps be preferable than having them brought in as separate exhibits, because they wouldn't be attached, and the jury might not consider them in connection with the exhibits.

Mr. Powell: We offer them in connection with 9 and 11. They are designated as such; and ask that the Clerk attach the appropriate ones to the appropriate exhibits.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.) [607]

The Court: Members of the jury, in connection with exhibits 9 and 11, certain summaries of the figures have been prepared, and those summaries will be attached as the last page of each of those exhibits. You may proceed.

J. C. STEVENS

a witness called on behalf of the Defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. You had finished your description of the bar screens and explained your depreciation figure on bar screens, Mr. Stevens.

A. Well, the bar screens, some of them are wood, and not a permanent type of construction, so I depreciated them. I set up a condition, present condition, of 40 per cent of an estimated cost of \$3600.00, leaving \$1440.00 for depreciated value. I think I explained that yesterday.

Q. Now, you have what for the three operators' cottages?

A. I explained that yesterday.

Q. You did?

A. Yes.

Q. And did you have a total?

A. The price there of \$5500.00 for operators' cottages new would include the wiring and transformers.

(Testimony of J. C. Stevens.)

Q. You explained that yesterday?

A. Yes, I did. In fact, I explained all of item 3.

Q. Had you completed the total? [608]

A. I think so.

Q. Now, as to item 4.

A. Item 4 is the generating equipment in the power plant. Unit number 1 is the old Allis Chalmers unit, on which I placed a price new of \$75,000.00. I considered its condition as 60 per cent, leaving a present value of \$45,000.00 for the unit. That includes the turbine, the three wheel turbine, and the generator, and the governor, including the tanks, pumps, and so forth that are included with the governor. That is an Allis Chalmers governor also. That unit is rated at about 900 kilowatts under a unit power factor, but the unit actually has been running around 1200 kilowatts at all times. In other words, the old rating in those days was less than the actual capacity of the unit.

Q. And what about the next item?

A. The next item is unit number 2, that is the General Electric generator with the propeller type of water wheel. It includes the Woodward governor, and the estimated price of that new is \$82,000.00 installed, with a virtually new—that is, within the last five or six years, so I placed a condition on that of 90 per cent, leaving \$73,800.00 as the installed cost depreciated.

Q. Mr. Stevens, you say five or six years?

A. Well, it was installed, according to the testimony here, finished in 1941, I think. [609]

(Testimony of J. C. Stevens.)

Q. And you're appraising this property—

A. As of 1943.

Q. So at that time it was only two years old, wasn't it?

A. Yes, that's right. I stand corrected. I was thinking of the present time. Then the turbine driven exciter that is there between the two units, and has a water wheel and a direct current generator upon the floor, I estimated that new at \$5700.00, and set up a condition of 60 per cent, leaving \$3180.00 as the depreciated cost in '43.

Q. I think you misread that figure. Isn't that \$5300.00?

A. It is \$5300.00. This is a little blurred here. I think that is right. \$5300.00 new is correct.

Q. And what is the next item?

A. The next item is the motor generator set. That consists of an alternating current induction motor directly coupled to a direct current generator. It is used for spare or other excitation purposes for those two units. The estimated cost new of that was \$3500.00, and the condition is 60 per cent, leaving \$2100.00 as the depreciated cost.

Q. And you have taken the next item, switch board panels, as the value given by Mr. Tinling?

A. I accepted his value of \$4260.00 for the switch board, but I set its condition also at 60 per cent, leaving a depreciated value of \$2560.00. [610]

Q. Now, what have you included in the next item, called station wiring?

(Testimony of J. C. Stevens.)

A. The next is the station wiring and storage batteries and the wiring conduits. I set a value of \$7080.00 on that, with 60 per cent condition, leaving \$4250.00 depreciated value. The next item is the 10 ton travelling crane. I accepted Mr. Tindling's price on that also, \$3600.00, 60 per cent condition, \$2160.00.

Q. What is there about those cranes to wear out, Mr. Stevens? A. Nothing.

Q. Why do you depreciate it 40 per cent?

A. Well, when you set up the unit, all the equipment of the plant, you will notice, has been set up at 60 per cent on the assumption not that they wear out, especially, but there is an obsolescence, sort of a creeping paralysis you might say, from obsolescence. The time may come when they'd want to replace the entire unit, so the only thing that would be left in there if they replaced that equipment, all of it, the switch boards and everything, that would leave your junk value. Although they're serviceable, the time may come when they want to replace them, so they have all been depreciated 60 per cent, I mean condition 60 per cent.

Q. That is, depreciated 40 per cent?

A. That is right. Now, the spare parts, the various things [611] that are on the Tindling list, that I set up new of \$2510.00 with the same condition of 60 per cent, leaving \$1500.00. The irrigation pump, 50 horsepower unit, or motor, with an 8 inch United Iron Works pump, I set the price new of that at \$2700.00, and 60 per cent condition gives \$1620.00.

(Testimony of J. C. Stevens.)

Now, there is miscellaneous and some omitted items that were not included, I don't know, generally in an estimate of that kind one makes an allowance for items in an inventory that have been overlooked or omitted, they're not large, they're small things, but it is frequently general practice to make some allowance for those and include them. The miscellaneous total, estimated \$3000.00, at 60 per cent condition, is \$1800. Now, from that total of item 4, generating equipment, we get a reproduction cost new of \$188,950.00, and the average condition of the entire plant, which of course used the old equipment at 60 per cent and the new at 90, gives an average condition of 73, I think that is, it is a little blurred here, 73 per cent, making the depreciated cost of \$137,970.00, to which has been added overhead of approximately 15 per cent, in round numbers, making a total for item 4 of \$217,300.00, which, with the same per cent condition of 73 per cent, gives a final value of \$158,700.00 for the depreciated cost, reproduction cost.

The next item, item 5, transmission lines and substations. [612] The first item is the transmission line from the Priest Rapids plant to the Coyote pumping station, 66,000 volt line, 16 miles of it, and I placed a price, a reproduction cost new, of \$5500.00 a mile, or \$88,000. That is depreciated 50 per cent, leaving a present value, present cost, of \$44,000.00. Next, the Priest Rapids substation, consisting of transformers, circuit breakers, coils, and so on, I placed a price on that of \$15,325.00, and on

(Testimony of J. C. Stevens.)

that I placed a condition of 60 per cent, same as for the power house, leaves \$9195.00 as the depreciated cost. The Coyote substation also consists of three transformers, switches, coils, and four-pole structures, two of them, on which I placed a cost new of \$11,975.00, depreciated 60 per cent, or rather a condition of 60 per cent, leaving a present depreciated cost of \$7175.00, in 1943. The next item was spare coils for the transformers. They're new, and have never been unboxed. One corner of the box was opened so I could see what the package contained. On those I placed the same price Mr. Tinsling did, of \$1700.00, and since they're new, there is no depreciation on them, so we carried that at \$1700.00 in the depreciated column.

That gives a subtotal for item 5 of \$117,000.00 new, with an average depreciation, average condition, of 53 per cent, \$62,070.00 in the depreciated column, to [613] which was added overhead of approximately 15 per cent, leaving a total for item 5 of \$134,550.00, 53 per cent condition, \$71,400.00 in the depreciated column.

The next item is the Coyote Pumping Station. The excavation for the building was estimated at 4000 cubic yards, at \$4.00, makes \$16,000.00 There is no depreciation on that. Concrete, re-enforced, and plain concrete, in the structure, I placed a price of \$50.00 per cubic yard on that, in place. That includes all the re-enforcing and also all the other facilities in the building, doors, windows, trim, roof, and all that sort of thing, making a total cost for

(Testimony of J. C. Stevens.)

the building as of 1943, \$34,500.00, on which a condition of 90 per cent was placed, leaving \$31,050.00 in the depreciated column. There is an intake, timber intake tunnel, contains about 38,000 feet, board measure, on which I placed a value of \$90.00 per thousand in place, or \$3420.00; depreciation, or condition, rather, on that was set at 75 per cent, leaving \$2560.00 for the depreciated cost; and discharge pipe of 72 inches, at the time, on which I placed a price of \$16,100.00.

Q. Mr. Stevens, on that discharge pipe, that was not there when you saw the plant?

A. No, I did not see it. It was there in 1911, but I did not see it in 1943. [614]

I only placed a condition of 30 per cent on that, because I was informed that they had staves and bands and things for repair there on hand, already paid for, substantial amount, so that the pipe could have been repaired and replaced with the equipment there, so that this depreciated value of \$4900.00 was intended to include the repair parts already there.

The operators' cottages, two of them, new, including the wiring to them, \$1500.00 each, or \$3000.00, depreciated to a condition of 60 per cent, leaving \$1800.00. Subtotal for item 6, new, \$73,020.00; the average condition is 77 per cent, leaving a depreciated cost of \$56,310.00, to which was added overhead of approximately 15 per cent, leaving the final figure for item 6 of \$83,970.00, at 77 per cent condition, or \$64,760.00 in its depreciated condition in 1943.

(Testimony of J. C. Stevens.)

The next item is the pumping equipment in the pumping station. The first item there is the old units, 450 horsepower units, connected to pumps in the basement, and those pumps are tied in series, 36 inch steel pipe connecting the discharge of one with the suction side of the other. On each of those units I placed a price of \$25,000.00 new, or \$50,000.00 for the two. The condition was placed at 40 per cent, leaving \$20,000.00 as the depreciated cost. Then there is a new pump, a third [615] pump, that is there. It is a General Electric unit, variable speed—may I correct the first two items here. That merely refers to the motors, and does not include the pumps. The motor for the General Electric unit, I got some prices for that one of my own, and placed the installed price at \$15,000.00 new, and as it is a recent installation, the condition was placed at 80 per cent, leaving \$12,000.00 for its price as of the depreciated value in 1943, depreciated cost.

Then there are the pumps. There's the two Allis Chalmers pumps, each connected to one of those 450 horsepower motors, and the two pumps are connected in series, as I have already described. On those I placed a price of \$10,000.00 new, or \$20,000.00 for the two, and placed the condition at 30 per cent, leaving a \$6000.00 cost in the depreciated column. The new pump, which has a capacity of 28,000 gallons per minute, variable speed, that is, it is driven at a variable speed by a variable speed motor, I placed a price on that of \$6000.00, condition 75 per cent, leaving \$1500.00 as its depreciated cost in '43.

(Testimony of J. C. Stevens.)

Then there is an item of piping, valves, and fittings, which I placed at \$3000.00, a condition of 40 per cent, leaving \$1200.00 as the depreciated cost.

Then there is an old vacuum pump that is used for [616] priming the two pumps; it is motor driven, on which I placed a value new of \$2000.00, 40 per cent condition, leaving \$800.00 as the present value or cost in '43.

Pump and motor of 50 horsepower for operators' houses, gardens, and so forth, and that also furnished water to the tank up on the hill for operating the hydraulic valves, I think, as near as one could determine at that time, on which a price of \$6500.00 new was placed, with a 40 per cent condition, gives \$2600.00. That pump was not in there in 1947, not in place in 1947. It had been removed.

Q. You have taken that description from——

A. I took that description from Mr. Hall or Mr. Tinling. Both of them, I think, were the same. Then there was a 5 horsepower motor and pump. I've got that marked for the hydraulic valves. I am not certain whether that or the other pump was used for the hydraulic valves. It doesn't matter; they had to have some pump, and it may be that that pump was used for the valves, on which I have placed a cost new of \$400.00 each, leaving \$800.00 for the pair, condition 40 per cent, \$320.00 depreciated condition.

Then there was the oil pumps and motors for the bearings and other services, two of them, at \$125.00 each, making \$250.00, 40 per cent condition, leaves \$100.00 for the depreciated cost as of '43.

(Testimony of J. C. Stevens.)

The switch board panel, with all of the instruments and accessories, I used the same price that Mr. Tinling did, I thought that was a fair value, of \$3800.00. I depreciated it, however, on 40 per cent condition, leaving a depreciated cost of \$1520.00. There is a bilge pump and motor, that is pump to unwater the tunnel or any other portion of the foundation when they wanted to unwater portions for access, was placed at new \$400.00, 40 per cent condition, leaving \$160.00 as depreciated cost.

The 10 ton crane, I used the same price as I did for the crane in the power station. It seems to be the same type and kind, and at \$3600.00, and it is depreciated 40 per cent, I mean a condition of 40 per cent, leaving \$1440.00. Then there is wiring and miscellaneous items of \$6000.00, also placed at a 40 per cent condition, leaves \$2400.00 in the depreciated column.

Subtotal for that item is \$117,350.00, and the average condition would be 45 per cent, leaving a depreciated cost in '43 of \$53,040.00, to which has been added the overhead item of approximately 15 per cent, making a total for item 7 of \$134,900.00, with the 45 per cent condition in 1943, \$61,000.00 depreciated condition.

Q. That description is of the equipment in the Coyote Pumping Station?

A. That is the equipment, and the substation; the substation is just in another building adjacent to the building; they're not all in the pumping station.

(Testimony of J. C. Stevens.)

Q. The description that you have just given is the description of the equipment in the pumping station?

A. Equipment, let's say, at the pumping station; it includes the building and its contents, and the transformer station and the four-pole structures adjacent to the building, and the cottages. No, the cottage is included in the item above, item 6.

Q. Now you have concluded with item 7?

A. Yes.

Q. Now, on item 8, the irrigation system, when did you first see the main canal and the lateral system.

A. In 1911.

Q. Did you go over the canal system?

A. In 1911?

Q. Yes. A. Oh, yes, all over it.

Q. Did you make any surveys of it then?

A. Yes, and outlined improvements to it.

Q. Pardon?

A. Yes, and outlined improvements to it, that is, to the [619] distribution system. and certain improvements, and also recommended the completion of the lining of the canal at that time.

Q. What was the condition of the concrete lining at the time you were there in 1911?

A. It was in very good condition, and the canal was about half lined, half of the main canal had been lined with concrete in 1911; maybe not half; let's say 40 per cent.

Q. Was it new?

(Testimony of J. C. Stevens.)

A. Well, it had been built year after year; virtually new. Wasn't any of it more than about three years old, four years old, and the work that had been done the previous year, in 1910, of course was a better job. They used a little thicker concrete, and the later work that was done in '11, in 1910 and 1911, was a better quality than that done earlier. It was a little thicker. Some of it was just a plaster cement coat, and that broke down pretty quickly, I imagine.

Q. And that is part of the concrete lining in evidence near the outlet?

A. No, the concrete lining at the intake—yes, after you get past the transition sections there, from the pump discharge to the canal, what lining is there is the old original lining. I don't know whether that was—yes, that was in in 1911, I think. I'm sure it was. [620]

Q. Have you allowed any value to that lining?

A. No.

Q. All right; now, what is your description of this irrigation system, Mr. Stevens?

A. Well, there is the excavation of the main canal, including structures that have to go into it; the total yardage, I took the quantity from Mr. Hall's inventory of 266,000, but I placed an average price on it of 35 cents for excavation, leaving a cost new of \$93,100.00. There has been no depreciation on that, as far as the excavation is concerned, so that the present cost in '43 would be \$93,100.00. Some loose rock, and some rather hard rock, as a

(Testimony of J. C. Stevens.)

matter of fact, in places, and on that I placed a price of 60 cents per cubic yard for 74,000 cubic yards, leaves \$44,400.00, with no depreciation, so we have \$44,400.00 in the last column. Flumes were priced at \$800.00, and the condition is set up at 40 per cent, leaving \$320.00 for the depreciated cost in '43.

The concrete included the work up at the head works and a few structures, 200 cubic yards, on which I placed a price of \$50.00 a cubic yard, \$10,000.00, condition set up at 60 per cent, leaving \$6000.00 for the depreciated column. There is the gates and checks and miscellaneous items of \$1500.00, with a condition of 60 per cent, leaving \$900.00 for depreciated cost. There is [621] a distribution system, some pipes, and some open ditches, and headings, and various things, for about 1500 acres, which I placed at \$20.00 an acre, or \$30,000.00 new, with a condition of 75 per cent, leaving \$22,500.00 for the distribution system.

There is the office equipment, pipes, and motors, and stores, pumps that were in stock, on which I placed a price of \$840.00, with a condition of 75 per cent, leaving \$630.00; miscellaneous items, \$3000.00, 60 per cent condition, leaves \$1800.00. Then the subtotal for the irrigation system of \$183,640.00 new, depreciated condition of 93 per cent, leaving \$169,650.00 depreciated cost, as of 1943, to which has been added the overhead, approximately 15 per cent, leaving a total for item 8, the irrigation system, of \$211,200.00 new, 93 per cent condition, \$195,200.00 as the depreciated cost in '43.

(Testimony of J. C. Stevens.)

Q. Now, what is the total, then, of items 1 to 8?

A. Beg pardon?

Q. What are the totals of your items 1 to 8?

A. Total for the items 1 to 8, inclusive, \$1,290,-120.00 new, an average condition for all those items of 80 per cent, leaving \$1,026,140.00 as the price cost in depreciated condition in '43. Now, to that I have added interest during construction, which is based on 3 per cent of that subtotal. It is really, I estimated a period of construction [622] of two years, so that the interest during construction should be at the average rate of half the total interest for the whole period, so that would be 3 per cent, that would be 6 per cent for the two years, and half of that would be 3 per cent for one year, 3 per cent for the interest, on which I get an interest value of \$39,000.00 for the item new, and \$31,000.00 depreciated. Adding those together gives a grand total for the whole project of \$1,329,120.00 new, 80 per cent condition, \$1,057,140.00 in its depreciated condition as of 1943.

Q. Now, you have included in the exhibit, Exhibit 15, the irrigation assets or properties and the power properties, haven't you?

A. In what I have read, yes. What I read was the total irrigation and power properties combined.

Q. Yes. I am asking, Mr. Stevens, if the figures that you have given represent, from your observation and the information you have, the reproduction cost new and the depreciated value of the irrigation properties on April 1, 1943.

(Testimony of J. C. Stevens.)

A. I wouldn't say a depreciated value. I'd say it represents the reproduction cost new and the reproduction cost less depreciation as of that year.

Q. And what about that date, April 1, 1943?

A. Well, it would be any time between April and October. The prices would be the same. There is no change in the prices.

Q. And what about the power properties as of October 1, 1943?

A. They would be represented by this tabulation at that time.

Q. I see. Now, you have also prepared, which is attached to the original, a segregation of the items in the exhibit, showing the segregation between irrigation properties and power properties?

A. Yes, I have.

Q. You won't need to give that, Mr. Stevens.

A. I've got the same totals and everything; it is just merely subdivided, segregated, into those two elements. Power plant would include the power plant and the transmission line to Coyote Junction, and the irrigation system would include the Coyote Pumping Plant plus the transmission line to the pumping plant. That is the only item I had to make a division of. In item 5 in my estimate I had transmission and substation all together. I had to subdivide that to get the total.

Q. Now, in arriving at a valuation of a property such as this, do you take into consideration the values that you have just described and given to us?

A. Well, they're one factor to be considered.

(Testimony of J. C. Stevens.)

Q. Is there any other factor to be considered?

A. Yes, several. If one had complete information one may [624] make a determination of the probable capitalized earning value of the plant. That would be another factor to be considered. If one had the actual historical cost that would be another element to be considered. In this case we did not have it.

Q. What about the going concern value, is any consideration given to that?

A. It is sometimes, but I haven't included any item in here except—well, there is no item included in there as such for going concern value.

Q. Did you compile for your information any figures in connection with possible capitalization and net earnings, or of net earnings?

A. Yes, I did, of the power plant; not of the irrigation system, but of the power plant alone.

Q. And on what basis—well, rather, what basis did you use for making that computation?

A. Well, the first thing one had to determine was the probable income, and then from the income you would deduct the annual expenses, until you finally arrive at the final net earnings of the plant, and capitalize that.

Q. Did you do that in this case?

A. Yes, I did.

Q. Have you taken into consideration, Mr. Stevens, that as well as the other elements? [625]

A. That as well as what?

(Testimony of J. C. Stevens.)

Q. Have you taken that into consideration in arriving at a value?

A. Well, I took that as one element to be considered, one factor.

Q. What rate of interest did you use in your capitalization?

A. I used 3 per cent; also 3 per cent interest on the capitalized value of the property.

Q. 3 per cent interest as a charge against it?

A. As a charge, an annual charge, against the earnings.

Q. In your capitalization of net earnings did you arrive at what you considered—just answer yes or no, did you arrive at what you considered the value by capitalizing the earnings of the power plant?

A. Well, I arrived at a capitalized earning amount here.

Q. Value——?

A. But I wouldn't set that up as the final value of the property at all, but it is an element, a factor, to be considered in arriving at a value.

Q. In your study, Mr. Stevens, of the possibilities of marketing power in the Pacific Northwest, when you made the study did you come to any conclusion as to whether there was a market for the power at this plant?

A. Oh, I don't think there is any doubt about the market for the power. [626]

Q. Was the market better in 1943 than it had been, or worse?

(Testimony of J. C. Stevens.)

A. Well, I think the market was—well of course, the market was probably the best during the war.

Q. Wasn't that during the war, 1943?

A. Yes, 1943 was right during the war. Of course, this capitalized value must be considered over a long period of years after the acquisition of the property.

Q. We're valuing the property, Mr. Stevens, as of October 1, 1943, and we must take the conditions as of that time.

A. The conditions are as of that time, as of 1943, that is, the prices, and interests, and the capitalized value and market price for power are taken all as of that period in 1943, but what I meant is the purchaser, of course, could not realize on it until he can operate the plant. That would be the basis on which, however, he would make a determination as to the acquisition of the property in '43, the prospective earnings.

Q. Did you arrive at an opinion, Mr. Stevens, as to whether the production of the power plant could be increased?

A. Yes, it can, by some work on the canal, to get in more water during low stages of the river.

Q. Is there any limitation, is the production of power limited by the flow in the river?

A. At the present time it is limited.

Q. By the flow in the river, Mr. Stevens? [627]

A. No, by the flow in the canal.

Q. I see. And did you take that into consideration in arriving at your value? A. Yes, I did.

(Testimony of J. C. Stevens.)

Q. How much of the flow in the river at low stages is utilized by the power plant?

A. Well, at the present time, 8 or 9 per cent, maybe, something like that. A small portion of the total flow of the river.

Q. And from your examination of the power plant and the power canal, Mr. Stevens, is it feasible to construct a canal so that the water may be——

Mr. Ramsey: Now, if the Court please, I object to this entire line of questioning. I object to any showing of valuation based on the formula that counsel has indicated. It isn't a question here of what might be the value of the reconstructed plant, or what might be the value if a million dollars was spent out there. The question is the value of the property at the time it was taken, and if we're going to go into the field of hypothetical, possible development of an entirely different hydro-electric plant, by the expenditure of hypothetical money, under hypothetical conditions, we're opening up a field here——

The Court: I think the Court ruled on that before. [628] I'll sustain the objection.

Mr. Powell: We'd like to be heard on that, your Honor.

The Court: Yes, all right; if the jury will step out.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

(Testimony of J. C. Stevens.)

Mr. Cheadle: If the Court please, we submit that on this question the leading case is *Olson vs. United States*, which is cited in each of the briefs which have been submitted by the defendant district. It was decided in 1933; it has been followed in a great number of Circuit Court cases. I read just one paragraph from it:

“Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land, but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the [629] full extent that the prospects of demand for such use affects the market value while the property is privately held.”

That case has rather recently been followed by the Ninth Circuit Court of Appeals. I was reading at that point, your Honor, from page 255 of the *Olson* case, which is 292 U. S. 246. That case was followed by the Ninth Circuit Court in the case of *U. S. vs. Waterhouse*, 132 F. (2d) 699, and I read briefly from page 703:

“Appellant’s argument is based on the assumption that appellees’ witnesses were testify-

(Testimony of J. C. Stevens.)

ing as to what prices the land would sell for if subdivided and as to rents which could be derived from the land if it were improved. The effect of that argument is that such witnesses were testifying not as to present value but as to some future value. The record gives no support to that argument, but, in fact, shows that the witnesses were testifying as to the value of the land in November, 1940."

In that case, you will note from the title that the United States was the appellant, and the decision was affirmed, the trial court decision was affirmed by the Ninth Circuit Court, and by an evenly divided court, there being many other questions involved, the case was affirmed [630] by the Supreme Court of the United States.

The Waterhouse case involved sugar cane lands just outside Pearl Harbor. They were being acquired by the government. It was the contention of the land owner, and they submitted testimony to this effect, a number of opinion witnesses testified as to the value which that property had if subdivided, and they showed that there would be demand in the near future, and that it was an item of value, not a measure of value, your Honor, but an element to be considered by any prospective purchaser who was having an appraisal of the property made, that element being the value that the property had as of the time of taking in view of the prospect for use of it in the near future as subdivided residential property.

(Testimony of J. C. Stevens.)

Now, we submit that Mr. Ramsey's objection is not in accordance with the law, and we also submit that his objection to this witness's testimony does not accurately state what his testimony has been to this point, nor does it accurately state the purport of the question to which he objected. Mr. Ramsey spoke of a hypothetical, entirely new power plant. The only question, your Honor, has been with regard to some improvement in the canal; no change in the power plant structure, no change in the power plant generating equipment, nor the turbines that drive the generators; merely some change that might be made in [631] the canal, which would result in the immediate future, it being a comparatively simple operation, in enlarging the power production of that plant, and we submit that the question is proper in those circumstances of the testimony offered, and in view of the cases cited.

The Court: Well, of course, I know the highest and best use rule, and I will instruct the jury on that. I think an example of that is your eighty acres here that are not being put to any use now, vacant land, but there is testimony that it is capable of use as farm land. In view of that testimony the question should be submitted to the jury as to whether the highest and best use isn't for farming purposes, even though it is not so used, and compensation made on that basis. The same thing is true of your land which is capable of being subdivided and sold as subdivided land. The thing that bothers me here, what you're talking about is

(Testimony of J. C. Stevens.)

not a different potential use for your power plant property, but what its value would be if its capacity were enlarged by some prospective improvement which wasn't made at the time of taking, or wasn't in contemplation, at any rate in the near future, and required the expenditure of a substantial additional investment. It doesn't seem to me that is any different in principal than if you attempted to show that by putting in improved and larged dynamos you could increase [632] your capacity, and that the cost would be justified because you would get a larger return, and I would have to let the government show it couldn't be increased, or it would cost more than you claim it would. We could go on for weeks on that theory. It seems to me the principle you have stated does not apply to this situation. The objection will be sustained. Exception allowed the defendants.

Just a moment, before the jury comes in. I just happened to think of this, and thought I might forget it later on. There isn't any question here about any of these other defendants named having any substantial interest in this verdict at the present time? I notice there are a large number of defendants included here in addition to the defendant Priest Rapids Irrigation District. I understand, of course, Mr. Ramsey's contention is that the District owns only the bare legal title, but is it conceded that the District is at least the owner of the legal title of all the property involved?

(Testimony of J. C. Stevens.)

Mr. Ramsey: Yes, your Honor. At the time that the action was instituted there was outstanding bonds of the District, and so far as could be determined all holders of all bonds of the District were joined as parties defendant. However, all of those bonds have been discharged, and any lien which might have attached to the [633] District facilities by reason of the outstanding bonds has been wiped out, so that at this time it is conceded that only the District is interested in this proceeding.

The Court: I see; the District and the government. That is, the District is on the defendant's side.

Mr. Ramsey: Yes.

The Court: I just wanted to be sure of that.

Mr. Ramsey: That accounts for the large number of defendants joined as party defendants in this case, was the matter of the outstanding bond issue.

The Court: The state didn't own all the bonds?

Mr. Ramsey: No, the state did not own all the bonds.

The Court: We'll take a recess now for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

J. C. STEVENS

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Stevens, you have been asked to form an opinion as to [634] the value of the properties that you have just described? A. Yes.

Q. And have you formed that opinion?

A. Yes, I have.

Q. What elements have you taken into consideration in forming that opinion?

A. Well, all the factors and elements that were available, the reproduction cost less depreciation as of 1943, and my general knowledge of the territory and the irrigation system as it was constructed, and the power plant as it was constructed, and examination of the property, not only in 1911 but also in 1943.

Q. You mean in 1946?

A. I mean in 1946, yes.

Q. Did you also take into consideration a computation or any information as to capitalization?

A. Yes, I gave that some weight, as to the power plant alone.

Q. What, Mr. Stevens, in your opinion, was the fair market value of the power plant properties as you have described it as of October 1, 1943, that

(Testimony of J. C. Stevens.)

is, that amount which in your opinion a buyer ready, able and willing, but not required to buy, would pay to a seller ready, able and willing, but not required to sell, both parties being fully informed? [635]

A. I put a value on that, a fair market value, of \$635,000.00.

Q. And having in mind the elements of the question I have just asked you, what is your opinion of the fair market value of the irrigation properties, that is, the transmission line from Coyote Junction to the pumping station, the pumping station with all the equipment and fixtures, and the canal and lateral system?

A. I place a fair market value on that property as of October, 1943, of \$315,000.00.

Q. Now, what in your opinion would your value be as of April 1, 1943?

A. Same value, \$315,000.00.

Mr. Powell: That's all.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Stevens, in arriving at your conclusion as to the market value of that property, did you acquaint yourself with the history of the property?

A. You mean the financial history of it?

Q. Yes.

A. Well, I was more or less acquainted with it as of 1911, that is, up to that time, but since then I haven't had very much information. I have not

(Testimony of J. C. Stevens.)

made a special inquiry regarding it, no, I haven't, since that time?

Q. Who was operating the property in 1911? Was it the Hanford? [636]

A. Hanford Irrigation and Power Company, I think, at the time.

Q. You don't know how they happened to lose possession or ownership of the property?

A. No, not except by hearsay evidence, just by hearsay.

Q. You don't know how the Black Rock Power and Irrigation Company, their successors in interest, happened to lose ownership of the property?

A. Except by hearsay.

Q. Do you know the price that the district was able to acquire that property for?

A. I don't know.

Q. You did not acquaint yourself with the past financial history of that property from the time it was built down to the time it was taken over by the irrigation district? A. I did not.

Q. Well, now, Mr. Stevens, in making a study of the fair market value of such properties as this property, don't you think it is very important that the past financial history of that property be taken into consideration?

A. I wouldn't think so.

Q. You wouldn't think so? A. No.

Q. You would ascribe any failure of successive ownerships to keep that property out of the red to poor management, [637] and not to the property itself, is that the idea?

(Testimony of J. C. Stevens.)

A. It might not only be poor management, but it might be political manipulations.

Q. Yes. Now, you took into consideration the earning capacity of that property?

A. Well, I made, for my own purpose I made an estimate of the earning value of that property, with certain improvements in the canal that would be required.

Q. You took into consideration the earning capacity of that property if money was expended to put it into a different condition than it was in?

A. I did not give that very much weight.

Q. All right; now, just what did you find that property had earned for 1942 and prior years?

A. I don't know.

Q. You don't know what it was?

A. I don't know what it had earned, no.

Q. Did you take into consideration the cost of the operations of that property? A. Oh, yes.

Q. Did you inquire to find out what those costs were?

A. No, I made my own estimate of what it should be.

Q. Did you take into consideration the cost of upkeep of that property? A. Yes. [638]

Q. Did you inquire what it had been necessary to spend to keep that property up through the years? A. No, I made my own estimate.

Q. In other words, you just did not feel that the past history of that property as to any item was worth a study in reaching that valuation?

(Testimony of J. C. Stevens.)

A. Oh, I wouldn't say it was entirely valueless, but I did not have the information in all its details, and I did not think it was of sufficient weight to try to find out about it.

Q. Yes. Now, you were employed by the district as an attorney, were you not?

A. Beg pardon?

Q. You were employed by the district as a witness in this case, were you not? A. Yes.

Q. And any information which the district had would have been available to you on request, wouldn't it? A. I presume it would, yes.

Q. But you did not make the request?

A. No, I did not make the request.

Q. On what dates were you at the power plant and on the power line and on the irrigation system for examination of those properties, Mr. Stevens?

A. Well, I was at the Priest Rapids Power Plant on September [639] 1, 1946. At that time, the same time, we rode along the power transmission lines. I did not go down to the Coyote station at that date. I was at the Coyote Pumping Plant on January 31, 1947. I beg your pardon, I think that was January 30.

Q. And how many hours would you say you were at the pumping plant on that date?

A. On January 30th?

Q. Yes.

A. Oh, an hour and a half, maybe.

Q. And how many hours were you at the power plant on September 1?

(Testimony of J. C. Stevens.)

A. I was there most of the day, maybe six or seven hours, six hours.

Q. And those were the days on which you made your physical inspection of the properties?

A. That's right.

Q. When did you make your physical inspection of the distribution system of the District?

A. Well, most of the distribution system was obliterated at the time, that is, it had been put out of commission. The ditches and canals were full of tumble-weeds, and I did not follow the route of all of them. We crossed them at a good many places, and I examined them at those points. I had been over them, of course, in 1911, knew [640] them fairly well.

Q. Well, on what date was it that you viewed the ditches and canals and laterals?

A. Well, that was on the same date that I examined the power plant. We spent the entire day on the project, on the 1st of September.

Q. When you went up to the power plant, you examined the canal?

A. Well, I examined it at points where it could be seen from the highway.

Q. Well, let me put it this way. You made an inspection of the canal on that date?

A. At certain points.

Q. At the intake?

A. No, I did not go to the intake on September 1.

Q. You inspected the building?

A. The power plant?

(Testimony of J. C. Stevens.)

Q. Yes. A. Yes.

Q. And the installations?

A. And the installations, and the canal.

Q. Now, I don't suppose that in that short time, Mr. Stevens, you had time to make a careful examination of each piece of machinery there to determine its exact condition? A. No. [641]

Q. Or each piece of electrical equipment?

A. No, I did not. Of course, if one was going to make a critical examination of the machinery you have to un-water it and go down into the wheel, or pull the wheel out and examine those things, but I did not consider that was essential in this case, because whatever wear might occur to those parts, there would be no wear to any parts except the turbine, and that could be repaired, and it is repaired, by welding up any pitted portion or making general repairs to the bearings and things of that kind, and the depreciation to the condition that I have set out here is based on a depreciation entirely independent or rather, after this maintenance program could be carried out, the remaining depreciation that could not be repaired by reasonable amount of maintenance is the condition I considered that in.

Q. You did hear the statement of Mr. Yeager that when this power plant was taken over in the fall of 1943 by the Pacific Power and Light Company, that they found it immediately necessary to replace the governor on one of those turbines, as it was worn out?

(Testimony of J. C. Stevens.)

A. Well, the governor wasn't there in '46, when I was there, and not in '43, I am informed, and I examined the equipment that was there in '46, and made inquiry as to when it was installed, so that I was satisfied it was there [642] in 1943. I know the history of what happened, of course.

Q. Well, now, the thing I am getting at is this, Mr. Stevens: You ascribe a certain value with a certain depreciation to the equipment that you found in the plant. Did you know then, or at any time that you made up your figures, your computations, that the new governor, or the governor that had only been in the building therefor about three years, had been installed by the Pacific Power and Light Company, and not by the District?

A. No, I didn't know who installed it.

Q. So that you have run through your figures here a value on that governor, which I think Mr. Tinling valued at \$5,000.00, you didn't know that that actually was not the governor that was in the property at the time it was taken over by the government?

A. In 1943?

Q. Yes.

A. I was under the impression that that is the governor that was there in 1943. The old governor that they put in first was replaced at some time, and I was under the impression it was prior to 1943. However, as I understand it, the Pacific Power and Light Company had leased the property, and I assume any improvements they had made would be reimbursed to them by the District.

(Testimony of J. C. Stevens.)

Q. Well, you know, do you not, that the government actually [643] took over that property and acquired title to it in May of 1943?

A. Yes, but the governor that is listed in Mr. Tinling's list, as I recall it, is the Woodward governor that is there now.

Q. That's right.

A. It was there in 1943.

Q. I don't see how that follows, exactly.

A. Well, Tinling's estimate was made as of October, 1943, that is, his inventory, and if this new Woodward governor is in that inventory, it presumably was there in 1943.

Q. Well, you did hear the testimony of the witness Yeager that that governor was put in there after the Pacific Power and Light Company took it over on lease from the government?

A. Well, I don't know when that was; I don't know when the lease was taken over from the District. I don't recall any testimony from Yeager or anybody else that that governor was not there in 1943.

Q. You recall the testimony of Mr. Yeager that they replaced the old, worn out governor after October 1, 1943, with a new governor?

A. No, I don't recall that.

Q. You don't recall that?

A. I was under the impression it was replaced prior to 1943, [644] October.

Q. Yes. Now, do you recall the testimony of Mr. Yeager that when they took over that plant

(Testimony of J. C. Stevens.)

they found it necessary to rewire for reasons of safety?

A. Well, I presume that certainly the installation of any new equipment, replacement of one unit, would require quite substantial changes in the wiring system. The old unit that this replaced, the first one they put in was a new propeller wheel with the old generator on it, the old number 2 generator, which is identical with unit number 1, but something happened to that, so I am informed; the unit blew up, and it wrecked that generator, and then they had to replace it with that new General Electric generator.

Q. That was back in 1937?

A. Somewhere in there.

Q. But I'm referring now to the testimony of the witness Yeager, in effect, that when the Pacific Power and Light Company took that property over under lease, they found it necessary to rewire generally throughout the power house there, for reasons of safety; that a portion of the—I think he said a portion of the wire was not insulated, there was no protection from it.

A. Well, I don't know the details of that, but my belief is it was rather a minor operation. [645]

Q. Yes. Now, in your item here for wiring—

A. No item for wiring in my estimate.

Q. I say, in your item for wiring, here, are you setting up the new wiring that was done by the Pacific Power and Light Company, or is your item on the old wiring that they replaced?

(Testimony of J. C. Stevens.)

A. No, that is the wiring as I understood it was there in 1943.

Q. When did you make your inspection for the purpose of placing your values on this property?

A. In September 1, 1946, and also in January, 1947.

Q. Well, now, if the Pacific Power and Light Company when they took this over in the late fall of 1943 actually rewired that power house, or a portion of it, or any part of it, that rewiring job that was done at that time is reflected in your figures here, isn't it?

A. Well, that is the reason I placed a 60 per cent condition on it, because it was not new equipment, no new wiring. That 60 per cent condition was intended to take care of any of the lessening of serviceability that would result from its use, and I assume that a lessee would be compensated, of course, by the District, for anything—

Q. Well, now, let's get this through our mind. You have made certain assumptions here, Mr. Stevens. The District lost title to these properties in May, 1943, and it did [646] not belong to them after that date. If you're right in your assumption that any sums that was spent by the Pacific Power and Light Company it had been reimbursed for, it wouldn't be by the District, because the District no longer owned the property; the government owned the property.

A. Well, if they made anything prior to the time it was taken over by the government—I don't

(Testimony of J. C. Stevens.)

know when the lease with the Pacific Power and Light Company was made. I did not inquire as to the date of that.

Q. Well, the testimony of Mr. Yeager was that the Pacific Power and Light Company lease this property and took it over on October 1, I believe, 1943, and that lease was with the government, not with the District.

A. Yes, that was with the government.

Q. So if you've gone forward on this matter on the assumption that anything that was put in there new, or any repairs that was made by the Pacific Power and Light, became the property of the District, because the District reimbursed the P. P. and L., then your assumption is erroneous.

A. Well, they're minor items, and they wouldn't affect the valuation of the property, anyhow, as I've set it out.

Q. Well, they may be minor items in the final value you set on this property, but I wouldn't say that \$5,000.00 for a governor, or several thousand dollars for a wiring job, [647] was too minor to be considered. Now, I assume, Mr. Stevens, that you had access to all of the quotations as to the price of electrical machinery and generating equipment that was available to Mr. Tinling?

A. Well, not to quite the extent. He's a contractor in that business particularly, and we're not contractors in electrical work.

Q. That's right.

A. The prices, of course, the published records, are available to us, of course.

(Testimony of J. C. Stevens.)

Q. Mr. Tinling I believe testified that he was a member of an electrical supply firm?

A. I think so.

Q. And you feel, then, that he should be very well acquainted with the actual cost price?

A. I feel this way, that if I had undertaken to value every bolt and screw and brace and thing that was there, like he did, that I would have had to get someone on electrical supply equipment in my office, because I didn't have the time to do it personally, and I could not think of anyone I'd rather trust than Mr. Tinling.

Q. All right, then let's make a comparison of the values you have placed, not on the nuts and screws and bolts, but on the important items of electrical equipment and machinery in the power house there, and the price Mr. Tinling says [648] they could have been replaced new for. Let's take generating unit number 1, on Mr. Tinling's tabulation; \$24,000.00 for the generator, \$32,000.00 for the triple impeller wheel, \$5,000.00 for the rotary oil pump, making up the whole unit, or a total of \$61,000.00. Now, let's turn to your values, your replacement values, placed on the same item. You have given a single item of \$75,000.00, or \$14,000.00 more than Mr. Tinling says he could have replaced that unit for, brand new, as of the date of the taking.

A. Well, Mr. Tinling doesn't handle that unit, nobody handles it any more. It is an old unit of 1908 that isn't built any more.

(Testimony of J. C. Stevens.)

Q. That's right.

A. But if it had to be replaced in 1943 I don't believe you could acquire the unit, take it there, and make the installation for less than \$75,000.00. The unit has three turbine blades in it, three turbines in it.

Q. And as a matter of fact it would be more efficient if instead of the three blades, it had a rotary wheel?

A. A propeller wheel, yes, with adjustable blades, however.

Q. Actually a propeller wheel would be more efficient than the triple wheel that they have installed?

A. Yes.

Q. So you could replace it with more efficient parts, so far [649] as the wheel itself is concerned, for less money, couldn't you?

A. Yes, but that of course wouldn't be replacing this unit.

Q. No, not the exact unit, but you could replace it with a more efficient unit throughout for less money than that, couldn't you?

A. I'm not so certain you could.

Q. You have made no deductions, here, Mr. Stevens, for obsolescence?

A. On that unit?

Q. On that unit.

A. Oh, yes, that is mostly what the 60 per cent condition is for.

Q. Obsolescence?

A. Obsolescence, largely obsolescence. I think the unit has just the same serviceable value it did

(Testimony of J. C. Stevens.)

when it was put there; the kilowatts are certainly just as good, that it makes, but it isn't a very efficient unit, and my belief is that if it was continued, in time they would want to replace that with a propeller unit, but I don't think they would get it in for a less sum than that, that is, couldn't at that time.

Q. Now, we've got a condition of obsolescence there that you figure if a commercial company was taking that over for the generation of power, now or sometime in the not too [650] distant future, they would want to replace the whole set-up?

A. No, not the whole set-up. My feeling is that if the canal system were enlarged so you could get in a sufficient quantity to operate those units at full capacity, that the time would very likely come that they would want to replace that unit so they would get a more efficient machine, and get a larger number of kilowatts than they're getting out of the old unit, and therefore it would be justified.

Q. You certainly wouldn't advise a client of yours to pay \$75,000.00 for that generator and wheel at the present time, would you, if he was buying one? A. No, I wouldn't.

Q. And you wouldn't feel like advising him to pay \$45,000.00 for it either, would you?

A. Well, if you were buying the whole plant, that would be a reasonable value, I imagine, because it is certainly producing \$45,000.00 worth of kilowatts right along.

(Testimony of J. C. Stevens.)

Q. These generators and wheels do wear out eventually, don't they?

A. I know of very few of them that have actually worn out. The general plan of maintenance involves the repair of the bearings and the welding up of the parts that are worn in the blades or the turbines, and any other repairs [651] that can be made are usually made, and in that regard the depreciation would not apply to the unit from the standpoint of wear and tear, only when the cost of maintenance gets entirely beyond reason, and this is largely an obsolescence condition or depreciation that I have used here, out of date, outmoded inefficient.

Q. Well, let's pass on to generating unit number 2. Mr. Tinling says that that can be replaced new for \$27,000.00 for the generator, \$32,000.00 for the propeller type wheel, and \$5,000.00 for the governor, or a total of \$64,000.00. Turning now to your tabulation, I find that you have put, instead of \$64,000.00 as a replacement cost of that unit, the sum of \$82,000.00, or \$18,000.00 more than Mr. Tinling says it can be replaced brand new for.

A. Yes. I obtained prices for the propeller type of unit and the generator from S. Morgan Smith Company. They make propeller type units, and they quoted me a price in 1943, if I can find it here, they quote me a price on the generator of \$23,940.00; for the water wheel, with fixed blade propeller of that capacity, \$37,600.00. That would include the governor. Total cost, \$61,540.00 at the site. Now, that unit had to be transported into the power house

(Testimony of J. C. Stevens.)

and erected, with a lot of alterations in the concrete work, and I added one third, which is a very reasonable price, to the cost of the unit itself for the [652] cost of installation, making in round figures, \$82,000.00.

Q. Let's move on to the next item, the exciter, appearing under number 4, page 2, of Mr. Tinling's compilation here. Allis Chalmers vertical exciter, 120 volt. Mr. Tinling says that can be replaced brand new for \$3600.00 as of 1943. Your item here shows \$5300.00, I believe. A. Yes, \$5300.00.

Q. Or \$1700.00 more than Mr. Tinling shows?

A. Yes.

Q. Now, on the exciter motor generator set.

A. I placed a price of \$3500.00 on that.

Q. Mr. Tinling's item there shows a price of \$2100.00 that he says he can replace that brand new for.

A. Well, my judgment is you couldn't, new.

Q. Now, turning over to page 8 of Mr. Tinling's compilation, under 2, pumping plant, Allis Chalmers 450 horsepower motor, which I assume is the same item shown under your breakdown under 7, pumping plant equipment, motor, Allis Chalmers, 450 horsepower.

A. Yes, they're the same unit.

Q. There are two of those motors, I think, shown in each item? A. Yes.

Q. Both Allis Chalmers. I note that Mr. Tinling places a reproduction cost new on the two motors of \$20,000.00, [653] while you place a reproduction cost new on the two motors of \$50,000.00.

(Testimony of J. C. Stevens.)

A. Yes. Well, I think if they were to be replaced now you would have to pay \$50,000.00 for them to get them installed.

Q. Going down to the next item, General Electric 675 horsepower motor, I note that Mr. Tinling says that that could be replaced new for \$11,000.00; you have entered an item there of replacement new of \$15,000.00.

A. Yes, I got prices from local dealers there of units of comparable design, with General Electric motors and variable speed pumps. The price on the motor at the site was \$10,630.00, and the pump was \$7,000.00, installation \$5870.00, about a third of that purchase price at the site, making a total of \$23,500.00, and I've used—I don't think I used that value, exactly; I used \$15,000.00. Now, whether that doesn't include the pump—I used \$26,000.00 for the pump and motor.

Q. You based your estimate of the replacement cost on figures furnished to you by some local dealer in Portland?

A. Well, it was a dealer of the same type of unit; it was a General Electric unit, and S. Morgan Smith pump.

Q. Let's go on to the matter of the pumps, here.

A. Beg pardon?

Q. Let's move on the items of the pumps. Now, I'm asking [654] you to keep very close touch with these items for this reason, that this is unfamiliar stuff to me, and I may get mixed up. If the items

(Testimony of J. C. Stevens.)

I'm referring back and forth are not identical will you please call my attention?

A. Yes, we'll try.

Q. I note here in Mr. Tinling's compilation a 35,000 gallon per minute pump, \$5,000.00; a 28,000 gallon per minute pump, \$3500.00, and in your compilation one pump set-up at \$15,000.00 and one pump set-up at \$10,000.00, for a total of \$20,000.00. Now, are those items identical?

A. No, the two pumps, Allis Chalmers pumps, are the two old pumps, and I set the price up there \$10,000.00 each. There's two of them. That would make the \$20,000.00.

Q. Now, are those two old pumps that you set up at \$20,000.00 the same pumps that are shown by Mr. Tinling as a total of \$8,500.00?

A. Well, let me check this. He's got two 35,000 gallon per minute pumps, that's those two old ones, at \$5,000.00.

Q. Oh, he runs the two old ones through at a total of \$5,000.00? A. Yes.

Q. And you run those two old ones through at a total of \$20,000.00, is that correct?

A. That is right, new.

Q. Well, I believe Mr. Tinling testified he was giving the [655] replacement price new on all of this equipment.

A. Well, I'm sorry, but \$5,000.00 wouldn't hardly pay the freight on them.

Q. I see. Now, he has listed here one 28,000 gallon per minute pump, \$3500.00, and you have

(Testimony of J. C. Stevens.)

listed one 28,000 gallon per minute, centrifugal, 60 foot head, \$6,000.00. Are those the same items?

A. Yes, that is a new pump, a variable speed pump.

Q. He has listed here a 2 cylinder Buffalo Pump Company reciprocating pump for \$750.00. You have a 2 cylinder reciprocating 15 horsepower pump.

A. Buffalo Pump Company, this is the vacuum pump for priming the two large pumps.

Q. What is your value on that?

A. \$2,000.00.

Q. \$3,000.00 item? A. \$2,000.00.

Q. His value is \$750.00? A. \$750.00, yes.

Q. 5 horsepower vertical motor driven pump and starter, is that the same as your pump and motor for hydraulic valves?

A. Yes. He has a price of \$175.00, and I have \$800.00, because I saw places for two pumps there, two outfits, and he only had one listed. Now, it might be a mistake, but the pumps had been taken away, and all I could find at [656] the time was the place where they had been installed.

Q. You did not see the pumps at all?

A. No, the pumps were not there.

Q. So your value just replaces a couple of pumps you assumed were there, and you assumed what the pumps were?

A. Yes; the pumps were given by Mr. Tinling as 5 horsepower motors with pumps, each, but I found a place that identified them as two pumps there instead of one.

(Testimony of J. C. Stevens.)

Q. So you relied on his listing to that point and then you decided he was in error, and added an extra pump, is that it?

A. I didn't add an extra pump. I saw a place where one should have been.

Q. Well, you added an extra pump to his list?

A. I added an extra pump because I thought he made an error in omitting one pump, where there was two.

Q. I see.

The Court: We'll recess now, Mr. Ramsey, until 1:30.

(Whereupon the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 14, 1947,
1:30 o'clock p.m.

(All parties present as before, and the trial was resumed.) [657]

Cross-Examination
(Continued)

By Mr. Ramsey:

Q. Now, Mr. Stevens, going on with our comparison, I notice an item in your breakdown here of a travelling crane, a 10 ton crane, that you have listed at a replacement price of \$3600.00. That is in the Coyote plant, the pumping plant?

A. Yes.

(Testimony of J. C. Stevens.)

Q. I believe you stated that you adopted Mr. Tinling's value and replacement cost of the 10 ton crane shown as a part of the power plant equipment? A. Yes.

Q. Which was listed at \$3600.00?

A. \$3600.00, yes.

Q. Mr. Tinling, however, lists the replacement cost on that particular travelling crane down at the pumping plant at \$3200.00? A. Yes.

Q. You did not adopt his value on that travelling crane? A. No.

Q. Why?

A. Because the cranes, as near as I could tell, are the same capacity, the same size.

Q. Well, they are not manufactured by the same company, are they?

A. I couldn't tell the name of the manufacturer. It is [658] plainly marked on the one in the power house, but not on the one in the pumping plant.

Q. There might be some structural differences in the cranes? A. Might possibly be.

Q. Mr. Tinling thought he could replace the one at the pumping plant, new, at a price of \$3200.00, and you didn't agree with him?

A. No, not the one at the pumping plant.

Q. And while you accepted his figure on the other crane, you did not accept his figure on this crane?

A. I accepted his figure because I thought that was the right figure, and it applied to both units.

(Testimony of J. C. Stevens.)

Q. In other words, you thought he was right as to the one crane, but not as to the other?

A. Well, that is his judgment. This other was my judgment.

Q. I see. Now, going on to the power line, I note that you have an over-all total on that power line of \$134,550.00.

A. Well, that includes the power line, the substation at Priest Rapids, the substation at Coyote, six transformers, circuit breakers, switches, and all of the accessories for both substations. That is the transmission line and substation, item 5.

Q. I have not totalled up Mr. Tinling's total on that, but it consists of items of \$40,930.60 for the poles and insulation, \$5,315.20 for the anchor structures, \$500.00 [659] for the switch structure at the junction, and \$34,200.00 for the wire and accessories, and an item of \$4997.00 for stringing the wire, and a further item of \$270.00 for the storage batteries for the alarm system. If my computation is correct that is a total of \$86,212.80. I am not able to tell from your compilation here just where the differences in replacement values arise, but do you agree with Mr. Tinling's figure of \$40,930.60 for the poles set-up?

A. The only thing I took from him was the length of the wire, the quantity and the length of the line.

Q. Other than that you're in disagreement with him all the way through as to the replacement installed?

(Testimony of J. C. Stevens.)

A. Oh, I wouldn't disagree with him. I simply made an average price of \$5500.00 a mile for the transmission line. He valued each individual little part and got a little slightly different value, that's all.

Q. Well, it makes a difference in value as I figure it here of about \$48,437.00.

A. Difference?

Q. Your total, I believe, is shown as \$134,550.00.

A. Of the transmission line?

Q. Yes.

A. The transmission line is \$88,000.00; the substations at Priest Rapids, and also at Coyote, spare parts, add up to [660] \$134,550.00 for all of them, including the overhead.

Q. Well, I may be entirely wrong, Mr. Stevens, but what items are included in your tabulation that are not included in Mr. Tinling's?

A. Well, Mr. Tinling's item 8, on page 4, the power line, 16 miles, is the sum of those 1, 2, 3, 4, 5, 6 pieces there; probably that's the figure you added up and got somewheres around \$86,000.00. Now, my comparable figure would be \$88,000.00, and then for the substations, the Priest Rapids substations, on his page 1, he's got 4 items there, and they are separately included, for which he has about \$16,000.00; I have \$15,325.00, I think, for that substation, and then there is a substation at Coyote, too, that is included in that item 5 of mine. I don't know what page that is on in his.

Mr. Powell: Pages 7 and 8.

(Testimony of J. C. Stevens.)

A. Yes, the substation at the Coyote Pumping Plant. He's got about, roughly, there, about \$18,000.00, where I have \$11,975.00.

Q. Well, as a matter of fact, his figures on the Coyote Pumping plant substation amounts to about \$12,000.00, doesn't it? A. Roughly, yes.

Q. And you have an item of \$11,975.00?

A. \$11,975.00. [661]

Q. Now, the total of his items for the substation at the plant, at the power plant, is about \$15,325.00, isn't it?

A. Around \$16,000.00, without adding it up in detail.

Q. Making a total, then, of his figures for the power line and substations of about \$113,000.00, a little better?

A. Yes, for which my figure is \$117,000.00.

Q. Now, could the witness be furnished with a copy of exhibit number—I don't know what the number is.

Mr. Powell: Mr. Hall's?

Mr. Ramsey: Mr. Hall's, yes.

Clerk: Number 11.

Witness: I have a copy here.

Cross Examination
(Continued)

Q. I note that on the excavation of the power canal Mr. Hall has a total replacement cost of \$141,840.00, as against your total of \$259,400.00.

A. No, as against my cost of \$225,600.00. You see, he has no——

(Testimony of J. C. Stevens.)

Q. Mr. Hall hasn't charged off any 15 per cent item for legal, engineering, and incidental expenses?

A. He's got his legal and engineering at the end. It is not included in his tabulation of the power canal.

Q. Then his total of \$141,840.00 covers the same items as your subtotal of \$225,600.00?

A. Yes. [662]

Q. I notice that Mr. Hall has fixed his per cubic yard figure for the excavation of 65 cents per cubic yard on the original portion of the canal excavated, and 57 cents per yard on the subsequent excavations, whereas you have run the whole thing through on the basis of \$1.00 per yard? A. Yes.

Q. That makes up the difference?

A. That makes up the difference.

Q. In other words, you accepted Mr. Hall's as to the total number of yards, and the difference in the two figures is explained by the difference in the amount which each of you have estimated that work could be done for? A. That's right.

Q. Now, moving on to the generating plant structure. Am I correct in assuming that you have accepted Mr. Hall's figures as to the total number of yards of excavation involved in that, and the type of excavation?

A. I have, yes, that is correct.

Q. So the difference between your subtotals as to the cost of the generating plant structure of \$138,900.00 and \$212,000.00 is accounted for by the fact that Mr. Hall fixes a price of \$4.00 per cubic yard

(Testimony of J. C. Stevens.)

for the excavation of rock as against your price of \$5.50 per cubic yard for that type of excavation, his price of \$30.00, I assume that is per yard, for concrete, and 6 cents per pound on [663] 60,000 pounds of re-enforcing, as against your figure of \$50.00 per cubic yard for re-enforced concrete, is that correct?

A. Yes; of course——

Q. And there's some further items there, the tail gates and the bar screens and residences and things of that sort.

A. That is substantially correct. I also included all of the trim and doors and miscellaneous parts of the building, and roof, and so on, that he didn't include separately; threw it all into the price of the concrete. Presumably his \$30.00 and the re-enforcing also includes all those items.

Q. Yes, his item, \$30.00 per cubic yard for concrete as against your price of \$50.00 per cubic yard for re-enforced concrete, involved other items.

A. You would have to add the re-enforcing to his figures.

Q. His figure of \$3600.00 for re-enforcing for the concrete. Now, on the Coyote Pumping Station structure. Again there did you adopt and accept Mr. Hall's yardage of materials, both excavated and used? A. Yes.

Q. Then the difference in your subtotal of \$73,020.00 as compared to his total of \$36,940.00 would be explained by the fact that he has fixed \$2.00 per yard as the cost of excavation as against your figure of \$4.00 per yard [664] for the same type of ex-

(Testimony of J. C. Stevens.)

cavation, that is, the 4,000 cubic yards shown in the first line? A. That is right.

Q. And your price of \$50.00 per yard for concrete as against his price of \$30.00 per cubic yard for concrete, plus a total item of \$800.00 for reinforcement?

A. That's right; there is also a difference of—

Q. I believe also that your total shows an item of \$16,100.00 for the discharge pipe as against his item of—well, I can't read that figure on this copy at all.

A. No, the discharge pipe is in the next item. I think I have it in one item and he has it in the other.

Q. Well, he has a discharge pipe listed here, I think, if you will note on the 5th item there, you will find the item, discharge pipe.

A. I see, yes, \$4900.00.

Q. As against your item of \$16,100.00?

A. Yes, that is right. Of course, his price, as I understood him on the stand, was reproducing in kind, as it was at that time, and mine was new, less depreciation.

Q. Yes, your price is based on reproduction in kind less depreciation.

A. No, reproduction new less depreciation.

Q. Well, what would be the distinction between reproduction in kind less depreciation and reproduction new less depreciation? [665]

A. Well, if I understood him, his reproduction in kind was reproducing it at the condition in which he found it. That is my understanding. You see, he took no depreciation off his list.

(Testimony of J. C. Stevens.)

Q. Yes, I distinctly remember there was no depreciation taken off his list.

A. Maybe I misunderstood him. To me, reproduction in kind would be to reproduce it as of the condition it was when he made the valuation, made the study. That is my conception of it. Maybe I'm wrong.

Q. Well, I'm not going to argue with you about that. You heard the testimony.

A. Well, I feel pretty certain that you couldn't put in that 72 inch pipe line for \$4200.00 new.

Q. About how long was that pipe line?

A. Oh, I judge it is about 200 feet, maybe, something like that.

Q. And that was a 72 inch wood stave pipe, wasn't it? A. Yes.

Q. And your best judgment of the cost of replacing that pipe in 1943 would be sixteen thousand and—— A. \$16,100.00.

Q. \$16,100.00, or \$16.10 per foot—no, I believe you said 200 feet, that would be \$8.05 per running foot, of 72 [666] inch wood stave pipe?

A. Yes—that's about \$80.00 a foot.

Q. Yes, I was just figuring that myself. That would be about \$80.00 per running foot for a 32 inch wood stave pipe?

A. No, 72 inch; six feet in diameter.

Q. Oh, 72 inch wood stave pipe. Did you get any prices on that wood stave pipe?

A. No, I did not.

(Testimony of J. C. Stevens.)

Q. You just estimated it?

A. I estimated it, yes. Of course, that includes all the excavation, and all the things that would go with it.

Q. Well, now, that wood stave pipe, Mr. Stevens, was not buried very deeply in the ground, was it?

A. Of course, it wasn't there when I saw it; in 1911 it was buried. The wind may have blown it.

Q. I hand you a photograph, Mr. Stevens, and ask you if that represents about your conception of the amount of excavation that was involved in laying that wood stave pipe?

A. Very likely, yes, if this is it; presumably it is.

Mr. Ramsey: I might say to the Court that this photograph will be offered in evidence later, after it has been properly identified.

The Court: Shouldn't it be identified now, so that we'll know you're talking about the same one? [667]

Mr. Ramsey: I don't know how I am going to identify it without calling a witness for that purpose.

The Court: I didn't mean identified; I mean marked.

Mr. Ramsey: Oh, I'm going to offer it as government's "A" for identification.

(Whereupon, photograph of part of 72 inch pipe line at pumping station was marked Plaintiff's Exhibit "A" for identification.)

(Testimony of J. C. Stevens.)

Cross-Examination

(Continued)

Q. Moving on to the irrigation system now, Mr. Stevens, which I believe is on page 2 of Exhibit 11, again I believe you have accepted Mr. Hall's estimate of the number of cubic yards of material involved in the excavation for the ditches and laterals and canals there? A. Yes.

Q. And the total number of yards of excavation required for the works?

A. Yes, I have accepted that.

Q. Under excavation, common, 266,000 cubic yards, I note that Mr. Hall figures a price of 15 cents per cubic yard, as against your price of 35 cents per cubic yard. A. That is right.

Q. Under loose rock and gravel, 74,000 yards, a price of 30 cents per cubic yard, as against your price of 60 cents per cubic yard? [668]

A. That is correct.

Q. And concrete transitions, 200 cubic yards, at \$20.00 per cubic yard, I presume that is?

A. Yes.

Q. As against your price of \$50.00 per cubic yard for concrete? A. That is correct.

Q. This is not re-enforced concrete, is it?

A. Beg pardon?

Q. This is not re-enforced concrete, is it?

A. Well, it isn't so marked by him, and I'm not certain whether they put re-enforcement in those head walls or not.

(Testimony of J. C. Stevens.)

Q. In any event, you used the same price per cubic yard as you used for the building of the power plant and the pumping plant? A. Yes.

Q. You accepted Mr. Hall's estimate of \$1500.00 for gates and checks—spillways, that is, spillway gates and checks?

A. Apparently I did, yes. Yes, I thought that was a fair figure for those items.

Q. Now, under the lateral system Mr. Hall has a lump sum figure of \$9,000.00. Is that the same item as your figure of \$30,000.00?

A. I think it is, yes. [669]

Q. Then you have added, of course, miscellaneous and omitted items? A. Yes.

Q. Which doesn't appear in Mr. Hall's breakdown? A. That's right.

Q. That item has appeared in every subdivision of your estimate, I believe, appearing as—no, I think I'm wrong on that, Mr. Stevens.

A. It appears in item 8, the irrigation system, and in item 4, the generating equipment.

Q. Yes, you have a miscellaneous and omitted item under 4, generating equipment, of \$3,000.00, which doesn't appear in Mr. Tinling's estimate.

A. That's right. Well, I think there is a part of his items, miscellaneous, that are there. He's got some items listed.

Q. I think that is correct. I think I noted there was a telephone line which he put in at \$170.00, and some wiring, perhaps, that you have not listed separately? A. That is right.

(Testimony of J. C. Stevens.)

Q. Now, under your pumping equipment at Coyote, under 7, you have an item of wiring, omitted items, and miscellaneous, of \$6,000.00?

A. Yes.

Q. And under 8, the irrigation system, you have a miscellaneous [670] and omitted item of \$3,000.00?

A. That is right.

Q. That you simply added to cover the possibility that you missed items that should have been included?

A. Yes, and items that are—yes, miscellaneous items that are not listed, and in making up an inventory of that kind one seldom gets more than there is; there is always something less; there's items generally left over, and it is a common thing to put in some small sum for miscellaneous and omitted items from the inventory.

Q. You have a total of \$12,000.00 added to your estimate on that item, haven't you, altogether, \$3,000.00, \$6,000.00, and \$3,000.00?

A. Correct, \$12,000.00.

Q. And that is simply in case you should have missed anything that should properly have been charged up, to make sure that you have charged plenty, is that the general idea of the item?

A. The general idea of the item is to cover items of a miscellaneous nature that may have been omitted, just what it says.

Q. Now, in this item legal and engineering, I find that Mr. Tinling has used an 8 per cent addition

(Testimony of J. C. Stevens.)

to cover that. You have used a 15 per cent addition to cover that, is that correct? [671]

A. It covers more items than he has included.

Q. Well, he apparently covers his item in this manner: "Engineering, legal, and so forth" 8 per cent, and you set it up as overhead. Now, what is covered by the item "overhead" that isn't covered by the item "Engineering, legal, and so forth"?

A. Well, I don't know what he meant by his "and so forth" but my items of overhead would include engineering, legal expenses, financing expense, travelling expenses, automobile up-keep, office supplies, stenographic help, salaries of management and staff, maybe a manager and an assistant, all of the items that go into the creation of a project of this kind, that are of a completely general nature, not applicable or applied to any one unit thereof.

Q. Yes, you have assumed that it would be necessary in re-building this to finance it?

A. Why, yes.

Q. And for that purpose it would be necessary to run up certain charges to find the money and secure it?

A. Might very likely be.

Q. In fact, couldn't we say that your item covered everything that you could possibly think of that could be charged up against this situation?

A. No, it couldn't; I haven't charged up any going concern value; there are many other items that enter into a [672] reproduction cost that I have not included.

(Testimony of J. C. Stevens.)

Q. You think 15 per cent is a fair amount to be added for these various items?

A. Yes, I do. In substantiation of it, mention was made here of the 308 reports by the government. Some of those I had something to do with, as I was consultant for the Army while that was under way, and they have charged 12½ per cent for projects that run up between 60 and 100 million dollars.

Q. That is irrigation projects, isn't it?

A. Power and irrigation, that sort of thing.

Q. That isn't a matter of putting up some structures or digging ditches; that is all of the incidental costs that would be involved for an irrigation district, in putting in an irrigation system?

A. You mean that 12½ per cent?

Q. Yes.

A. No, that is the item of overhead that I have covered.

Q. For an irrigation district?

A. No, for the high and low dam at Priest Rapids, Grand Coulee, Foster Creek, the Umatilla Project, Bonneville—all of those estimates that were made carried a 12½ per cent overhead item to cover all those items of a general nature. On a large project of upwards of 60 to 100 million dollars the rate for overhead is somewhat less than it [673] would be for a small project of this kind, and if that is my measure of comparison, 15 per cent is about in line with that type of estimate, and then I've made a good many overhead estimates myself

(Testimony of J. C. Stevens.)

on the work that we've done. It runs very frequently up between 15 and 20 per cent; some places higher than that.

Q. You figure that a charge of \$31,800.00 is a fair charge to be made to cover these items in the building of the generating plant out there, this little concrete building that we saw out there?

A. I don't know where you find that figure. How much, \$39,000.00?

Q. No, under generating plant, number 3, generating plant.

A. Generating plant, under 3, yes.

Q. Overhead, \$31,800.00. A. \$31,800.00.

Q. And if you were putting up a concrete building comparable to that you would add to the other costs an item of \$31,800.00 to cover the factors that you have mentioned?

A. Well, there is more than just the building; there is the whole power site, and the plan of development, the original surveys, and all of the design work, and the actual construction, including the power canal, the acquisition and installation of the machinery, and all of the elements that go to make a project a going concern, [674] over and above the mere cost of the thing, is included as overhead.

Q. Now, you said there's all those items in there. Let's take acquisition and installation of machinery. Haven't you charged that against the machinery?

A. Yes; not the management of it.

(Testimony of J. C. Stevens.)

Q. Let's take all the elements of equipment for the project. Haven't you made that same charge against all the items? A. Yes.

Q. Then the \$31,800.00 applies only to the generating plant, doesn't it?

A. The power canal and the generating equipment and transmission lines.

Q. Just a minute. On your power canal you have an overhead of \$33,800 charges against that, that is 2. A. Yes, correct.

Q. Now, your lands and rights of way appears under 1, as a separate item of \$5,000.00, doesn't it?

A. What is your last figure? I didn't understand what you referred to.

Q. Items 1, lands and right of way, \$5,000.00.

A. Correct.

Q. Now, you have covered that by that item. Going down on the power canal alone, you have charged up an overhead item of \$33,800.00 on the power canal. [675]

A. There is no overhead item on the lands and rights of way.

Q. No, but what I'm objecting to is this, Mr. Stevens; you've listed the rights of way, and what have you, that was in your consideration in setting up this overhead. Now, under 1, you have made a charge of \$5,000.00 to cover rights of way and lands. Are you including that again as one of the factors in all these items where you have run up the overhead?

A. Certainly not.

(Testimony of J. C. Stevens.)

Q. You have charged against the power canal alone an item of \$33,800.00. A. Correct.

Q. And against the plant itself out there, that is, just the structure in which the power plant is located, an item of \$31,800.00?

A. Correct; 15 per cent on all of them.

Q. And as against the generating equipment in that power house, an overhead item of \$28,350.00?

A. Correct.

Q. And as against the transmission lines and substation, an overhead item of \$17,550.00?

A. That's right.

Q. And as against the Coyote Pumping Plant an overhead item of \$10,950.00? A. Yes, sir.

Q. And as against the pumping equipment in that pumping plant, an overhead item of \$17,550.00?

A. Yes, sir.

Q. And as against the irrigation system, an overhead item of \$27,560.00? A. That's right.

Q. Now, even after you depreciated that overhead item, and carried it into the depreciated value, you have actually charged up in this case as an item of overhead a total of \$133,360.00?

A. For that you've added up the sum of the depreciated overheads?

Q. That's right.

A. I haven't checked it, but I'll accept your figure.

Q. Then you've made a further charge of interest, amounting to \$31,000.00? A. Correct.

(Testimony of J. C. Stevens.)

Q. Interest during construction?

A. Correct.

Q. And then you have made a further charge for omitted items amounting to \$6,000.00?

A. Yes.

Q. Or a total charge against the properties taken under this proceeding, in addition to the cost of replacement and installation, of \$170,360.00? [677]

A. No, sir, that's part of the cost of replacement, included in the cost of replacement. It is part of the cost of replacements, and on a million dollar project that is not high.

Q. Now, let's get into the matter of this interest during construction. What does that represent?

A. Beg pardon?

Q. What does this interest during construction represent?

A. Just what it means, you have the project financed, money available that is not earning until the project's completed and in operation, and the interest on that has to be paid from some source or other.

Q. And that you figured at the rate of 6 per cent per annum? A. 3 per cent per annum, yes.

Q. Not 3 per cent per annum; 6 per cent per annum?

A. 3 per cent per annum for two years; one half of the rate of 3 per cent per annum for two years; you usually figure on interest during construction that your money is expended at a uniform rate, and the general practice is to take whatever interest rate

(Testimony of J. C. Stevens.)

you have, multiply it by the number of years, and divide it by two. This happens to come out as 3 per cent interest on the entire cost of the project.

Q. Now, you state that in capitalizing the earnings of this plant you capitalized on the basis of 3 per cent earning capacity? [678]

A. The net returns, the net income after paying all the annual expenses, was capitalized at 3 per cent, yes.

Q. Now, Mr. Stevens, isn't that a pretty low rate of capitalization?

A. Well, that's about the rate for public money nowadays, even higher than the government is paying in a good many instances.

Q. Government bonds carry about 3.9, don't they?

A. Well, some of them don't carry that much.

Q. Well, 2.9, I mean?

A. I haven't been getting anything over $2\frac{1}{4}$; maybe there are some.

Q. Don't you consider that there would be a slight difference in the security of a government bond as compared to the earning capacity of a plant of this character?

A. Well, I don't think the security of the bond enters into the picture at all. If one can get money for 3 per cent, and that's all I've charged up for interest on this, 3 per cent, why, then that is the normal rate at which the earnings should be capitalized.

(Testimony of J. C. Stevens.)

Q. Now, if 3 per cent is available, and it was available in 1943, I'll grant you that, is that true over a long period of time before and after?

A. No.

Q. Now, your capitalization must be over a long period of [679] time, must it not?

A. Well you figure the value of capitalized earnings as of the year in which that was done, because if the buyer would assume that the interest rate would be 3 per cent over the life of property, and he purchased it on that basis, after he has purchased it he finds it gone up to 5 or 6, why, of course, he's out of luck, that is, he's lost some money. If it goes down, he's a winner.

Q. Now, would the normal buyer, even in 1943, be willing to pay for a hydro-electric set-up of this character a figure upon which he could expect a return throughout the life of the plant of only 3 per cent, and assume his risk of whether that earning could be kept up to that point or not?

A. I did not set this up for a privately owned and operated system; it was a publicly owned and operated system, which was quite a different thing. If it was privately owned he would have to include taxes and other items, but this capitalization, as I say, I didn't give any, hardly any weight to it in my estimate of value, was assumed to be on a publicly owned property.

Q. Now, Mr. Stevens, if this publicly owned property is to be offered for sale, and sold, wouldn't the natural assumption be that the purchaser would be a private concern? [680]

(Testimony of J. C. Stevens.)

A. Not necessarily at all; we have many agencies in this Northwest ready to purchase property; there is the P. U. D., the R. E. A., and the Bonneville Administration, there, that might be in the market for it; there is plenty of public concerns that might be considered. If I may revert again to the 308 reports, they set up two bases, one for private developments, and one for public developments, and they have a little different interest rate.

Q. I can imagine.

A. My capitalized earning was based on public financing.

Q. When you answered counsel's question as to what you believed to be the fair market value of this property as of 1943, as between an informed buyer and an informed seller, did you take that question to mean what in your opinion is the value of this property if some agency of the government bought it?

A. Not at all.

Q. Or did you take it to mean what is the price of this property on the open market, to a prospective purchaser who might be anyone?

A. The value I placed was just what I said it was, fair market value for any purchaser at that time.

Q. Now, in figuring your net return did you deduct taxes? A. I did not.

Q. You assumed that it would be in the hands of a municipal [681] or government agency where it wouldn't be subject to taxes?

(Testimony of J. C. Stevens.)

A. Working out this capitalized earnings I did, but I say, I did not use that to any material extent, or for any weight, in my determination of value.

Mr. Powell: May I object, your Honor, to the questions on this matter, because it is not, as I understand the rule, what the condemnor gains, but what the condemnee loses, and this was a tax-free plant at that time, and it seems to me the questions counsel is asking presumes something not in the record.

Mr. Ramsey: I submit to the Court that in the matter of property the seller cannot assume——

The Court: I agree with you there, you can't assume any particular type of buyer. It might be any buyer, either public or private. That is my understanding of the rule here. I don't think a different rule applies where the owner is a municipal corporation.

Cross-Examination

(Continued)

Q. So in computing your net earnings, you did not consider that the plant when it passed into private ownership would necessarily pay substantial taxes out of its earnings?

A. I did not make any deduction for taxes in that calculation.

Q. Now, as a matter of fact, commercial power plant properties [682] are taxed, and taxed heavily, are they not? A. Yes, sir.

(Testimony of J. C. Stevens.)

Q. And that very materially affects their net earnings, too, doesn't it?

A. It certainly does.

Q. And if we were going to figure out the value of this property in the hands of a private purchaser, that tax item alone, if you were going to capitalize on net earnings, would have a very, very material bearing, wouldn't it, on the value of the property capitalized on the earnings?

A. Yes, it would, and also very likely if it was a private concern you could increase the income by a substantial rate for the income over what I used in my figures, too, which would off-set it.

Q. Well, now, what figures did you use in determining it?

A. I used 3 mills per kilowatt hour for the income.

Q. And what did you base that on?

A. Well, that is a very low rate, I should think, for firm power. A good many sales, Bonneville is selling dump power at $2\frac{1}{2}$ mills.

Q. Yes.

A. And this isn't dump power; this is firm power; quite different.

Q. Yes.

A. I assumed it would be wholesaled at 3 mills; could be [683] retailed and distributed, probably, for 7 or 8 mills.

Q. Just a minute; we're not going into the retailing and distribution business. We're dealing now with a hydro-electric plant, and as a matter of

(Testimony of J. C. Stevens.)

fact, right out in the immediate vicinity of this plant there is a Bonneville substation, isn't there?

A. Yes.

Q. And was in 1943? A. Yes, sir.

Q. And in the sale of your power from this plant you would have to compete directly with the sale of Bonneville power in the same locality, wouldn't you? A. Well, you might and you might not.

Q. Well, the power is there, isn't it, available?

A. Yes; not in this quantity; not in those small rates, not in small quantities. A 240,000 volt line has come in there, and they're not retailing any power from that system, as I understand it.

Q. Well, now, as a matter of fact, and it is a fact, isn't it, the Bonneville Power Administration is retailing power to every village, every town, that there is on their lines, and building lines to take it there, isn't that a fact?

A. No, they are not.

Q. Well, where is an instance that they haven't done so? [684]

A. We've been trying to get Bonneville power at a gas ice plant I'm interested in on the Klickitat River for four years, and I haven't been able to get it yet, and that's a P. U. D. there, too.

Q. That isn't a private village, even, is it?

A. There is a town of Klickitat, and surrounding communities.

Q. Has the P. U. D. made application for power from Bonneville?

A. Oh, yes, several years ago.

(Testimony of J. C. Stevens.)

Q. And they haven't received it?

A. They haven't received it.

Q. Why?

A. Bonneville hasn't delivered it; they've been expecting it right along.

Q. Your difficulty is not that the Bonneville refuses to deliver, but that the Bonneville has not been able to construct to the point where they can deliver it?

A. Five years now.

Q. And there's been a war during that whole period, and during that time Bonneville was shut down, wasn't it, from further extensions?

A. That's correct.

Q. As a matter of fact, Bonneville is selling power to the Klickitat R. E. A. at the present time, isn't it?

A. I don't know.

Q. You don't know. Now, Mr. Stevens, in figuring the amount [685] of surplus power, or amount of power that you might have available for sale from the Priest Rapids plant, upon what did you base your determination of the amount of power that would be for sale, the figures for 1942 alone, or the figures for 1942 with prior years?

A. Didn't use either of them; I used the capacity of the system when the canal was repaired to put in sufficient water to realize the investment they already have in there.

Q. Oh, I see; your estimate, then, and your capitalization was based upon the assumption that additional monies would be spent in changing the canal to supply all of the water that could be used profitably by the plant?

(Testimony of J. C. Stevens.)

A. That is correct in arriving at the capitalization, but again I repeat that I did not use that capitalization in arriving at my value.

Q. On your capitalization scheme you assumed first that you could develop, would be in a position to add to the purchase price enough more money to develop the full capacity, the generating capacity, of the plant; you assumed second that the plant would pay no taxes; you assumed third that you would be able to market all of that power; in fact, you assumed everything that was favorable to a return on the investment, is that correct?

A. Well, that's a pretty broad statement. No, I won't accept that. I assumed just what I stated that I assumed, nothing [686] else.

Q. And then you capitalized it on the basis of 3 per cent? A. That is right.

Q. Now, Mr. Stevens, in fixing your value on this property which you stated in your opinion the property was worth, did you fix that value on that property as property that was in a position to manufacture and deliver its full capacity of hydro-electric power, or did you consider the fact that the prospective purchaser would necessarily purchase that plant with the trust imposed upon it to deliver free of charge to the Priest Rapids Irrigation District and the area therein lying free power for the purpose of pumping water to——

Mr. Powell: Pardon me——

Q. Let me finish the question— all of the lands irrigated in that District in 1943, together with the additional acreage——

(Testimony of J. C. Stevens.)

Mr. Powell: Making a speech, not asking a question.

Q. —that might be added thereto within the reasonably near future?

Mr. Powell: I object to a question of that kind. He's addressing the jury, not asking a question.

Mr. Ramsey: I don't know how I could ask it any other way. [687]

Mr. Powell: I do.

The Court: Just a moment; the question has been asked. Do you have an objection?

Mr. Powell: I do, your Honor.

The Court: What is it?

Mr. Powell: We object to the question calling for an answer or conclusion of the witness on a matter not testified to on direct examination; further, in that it is a question that calls for an answer which is not within the province of the jury, because it is a province which your Honor will be required to pass on as a question of law, not as a question of fact. We're valuing the property not with any burdens upon it, because the government has taken the properties and must pay just compensation for them, and isn't taking them with any burdens, and the properties have been valued with no burdens on them, and it is my understanding that is the purpose of the condemnation action, to fix the value of the property taken.

The Court: I will sustain the objection. Do you wish to be heard on that?

Mr. Ramsey: I wish to be heard rather extensively, if the Court please.

(Testimony of J. C. Stevens.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.) [688]

The Court: I might state first the court's view. It might shorten the argument. I doubt it, but it might. It seems to me that this property should be valued at its fair cash market value. What I propose to do here is to have a valuation placed upon all of the property of the District, that is, the fair cash market value, including the irrigation properties and the non-irrigation properties, that is to say, the power plant and the power transmission line. Under that theory of the case, which the court has adopted, there should be a finding of the full cash market value of the power plant. However, as to what compensation the District is entitled to, so far as the power plant is concerned, would depend upon in what proportion it is used for the sale of power and what proportion it is used in connection with the irrigation system, to furnish power for pumping water, so that I think the idea Mr. Ramsey has in mind might be material as tending to show what burden would be imposed upon the plant in the reasonably near future, in all probability, after the taking, and to arrive at how much surplus power there would be, which would go to determine the question of what proportion of the plant should be allocated to irrigation and what to non-irrigation, under the Schwellenbach formula, but it doesn't seem to me it should be brought in

(Testimony of J. C. Stevens.)

directly in determining the cash market value [689] of the power plant.

Mr. Ramsey: I submit to the Court first that counsel have been permitted in the putting in of their proof, and in the whole conduct of the case, to go into their own theory of the case, that is, fix the value of all of the facilities of the District, because their theory is they're entitled to be paid for all facilities of the District. I believe that the same rule should apply as to the government. The government has come in with a theory which is diametrically opposed, and I can't see why counsel for the defendants should be permitted to put into evidence everything that has to do with the establishment of their theory, and the government be barred from proceeding on its theory.

In the second place, I am not asking for a conclusion of this witness. It is a direct question that calls for a no or yes answer, that's all.

In the third place, it is the government's theory that the government should be called on to pay for here only what it takes. It took this power plant with a duty imposed upon it, the duty defined in the case of Black Rock Irrigation District, the perpetual duty to supply water to those lands down there. Now, the government took only what a private purchaser could or would have taken if they had purchased it, and that was defined [690] in just that way in the Black Rock case, that here was property susceptible of developing electric power, susceptible of developing perhaps a large amount

(Testimony of J. C. Stevens.)

of electrical power which could be sold, nevertheless, first and foremost, imposed upon that property was the trust obligation to the land. Now, the purchaser going in there to take it, the private purchaser, could buy only what the seller had to sell, which would be the plant with the trust imposed upon it, and that very materially would affect the fair cash market value of that property, so materially affect it that twice, when the operating company went bankrupt and that property was for sale in the bankruptcy proceedings, not a bidder could be found to take it at any price.

The Court: I think that would be true, Mr. Ramsey, if you condemned the power plant alone, and then you had an obligation, if that were physically or legally possible, if you could separate this out and condemn the power plant, and it would have the duty of serving this land, but your own theory is you took the land and the water rights and you have no obligation, because you have no irrigated lands.

Mr. Ramsey: Just a moment. If the government bought one piece of land it doesn't relieve the District nor the power plant from supplying water.

The Court: But you took all of it.

Mr. Ramsey: All right, but if we had never taken the facilities of the District the obligation would still be there to deliver the water on that land. We don't relieve it because the title passes to the government. The relief comes when the government takes over the facilities, and then it can operate

(Testimony of J. C. Stevens.)

those facilities for its own benefit or not, but I don't conceive that by the mere taking of title of land in the District, that the District is relieved of the duty or obligation of continuing to furnish water for irrigation on those lands.

The Court: I understand the government's theory, Mr. Ramsey. It's been argued, I think, on at least half a dozen occasions, one all day long in Spokane. I've heard your theory and I haven't adopted it in this case. I haven't adopted the defendant's theory. I will be obliged to instruct the jury that the defendant is not entitled to any compensation whatsoever for their irrigation works, or for any of this property that was devoted to irrigation at the time of the taking. I am permitting them to show the value of the works only because that is to be submitted to the jury in the form of an interrogatory for other purposes than the purpose of their verdict. I will try to make that very clear to the jury. [692]

I am not adopting the theory of the government, nor the theory of the defendant. I can't very well carry three theories; it's hard enough to carry one, which is the theory Judge Schwellenbach had, and which I have adopted.

Mr. Powell: For the purpose of the record, may it be understood, if your Honor please, that even though we have introduced evidence dividing the values, that we do not thereby accept or concede the correctness of the court's ruling in adopting the Schwellenbach formula.

(Testimony of J. C. Stevens.)

The Court: Oh, yes, I understand that.

Mr. Powell: We have tried to simplify it in that way rather than complicate it.

The Court: Oh, that is understood, of course, that neither side accepts the theory the court has adopted here. The objection will be sustained, and the government will be allowed an exception.

(Short recess)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceeding were had within the presence of the jury and one alternate juror.)

Cross-Examination

(Continued)

By Mr. Ramsey:

Q. Now, Mr. Stevens, what did you say you figured your sale [693] of power, at what rate did you figure your sale of power in computing your possible profits from the sale of the power at the plant there? A. I used 3 mills.

Q. 3 mills per—— A. Kilowatt hour.

Q. Kilowatt hour. Did you know that the Priest Rapids Irrigation District had a ten year contract with the P. P. & L. Company for the sale of their excess power at the time the government took it over?

Mr. Powell: I object as immaterial, because the government is condemning the property and taking the fee simple title free of all benefits.

(Testimony of J. C. Stevens.)

Mr. Ramsey: This is merely preliminary.

The Court: I'll overrule the objection, and see where it leads.

Cross-Examination

(Continued)

Q. Did you know that? A. Yes.

Q. Did you know that they were actually selling that power at $13\frac{3}{4}$ mills per kilowatt hour?

Mr. Powell: I renew my objection.

The Court: Overruled.

A. It is dump power, taken when, as, and if it is available. I'm figuring on firm power. [694]

Q. You're assuming, in other words, that you could deliver a certain amount of power under contract and at all times?

A. Yes, with the proposed improvement that is contemplated in the power company.

Q. After you rebuild your facilities?

A. No, we don't rebuild the facilities; we spend a small sum of money in realizing the investment.

Mr. Ramsey: Now, I submit to the Court that this is no proper method of approach in determining the value of property, to assume that in the future, and after the acquisition of the property, more money will be spent in developing additional power for surplus, and additional conditions.

The Court: What is it you wish the court to do, then, Mr. Ramsey?

Mr. Ramsey: I am asking the Court to instruct the jury to disregard all of the testimony of this

(Testimony of J. C. Stevens.)

witness that has to do with the delivery of firm power or the delivery of more power than was being generated there at the plant at the time of the taking, predicated upon proposed future additions and improvements on the plant.

The Court: Well, I think it will go to the weight of his testimony, rather than to its admissibility, in the cross examination. I'll deny the motion to strike.

Mr. Ramsey: Exception. [695]

Cross-Examination

(Continued)

Q. So your estimated income from the sale of power was predicated upon the basis of the sale of that power at 3 mills per kilowatt hour?

A. Yes.

Q. Rather than the $1\frac{3}{4}$ mills per kilowatt hour that the Priest Rapids Irrigation District had been receiving and would have received under their ten year contract.

A. Yes, instead of any other price besides the 3 mills for firm power.

Q. Now, Mr. Stevens, I want to go back for just a moment to the pumping plant. I believe you stated that you found down at the pumping plant two motors, two pumps, operating in series, that is, hooked together for the purpose of pumping?

A. Two pumps, yes.

Q. Is that an efficient way to pump?

(Testimony of J. C. Stevens.)

A. Well, it was the most efficient thing that could be done after they found out that the pumps separately wouldn't raise the water.

Q. Yes, but was it an efficient way to pump?

A. Oh, yes, that's an efficient way to pump; it is done many times; lots of times they pump by pumps in tandem.

Q. Wouldn't the cost of that pumping have been lowered about 50 per cent if a pump that was capable of pumping to the [696] possible 65 foot head had been installed there?

A. Well, the kilowatt hours consumed by those two motors was of course more than would have been consumed in a modern pump designed for that head.

Q. In other words, if you were operating that pump plant, or if you were looking it over for a prospective client, would you have advised him to continue his operation with these two pumps in tandem, or would you have advised him to replace that with a modern pump designed for the lift?

A. As long as the power was available there at that cost I certainly would advise him to continue operation of those two pumps in series.

Q. You mean as long as power was available at no cost? A. Yes.

Q. You would advise him to operate the two in series?

A. Well, at whatever cost it was there at that time.

(Testimony of J. C. Stevens.)

Q. Well, wouldn't the cost of operation be very materially increased in that manner over the cost of operating a pump designed to lift that water, if necessary, the full 65 feet?

A. You see, they had those two pumps in—the efficiency of that combination was around, a little over 50 per cent, as Mr. Hall testified to, 51 per cent, I believe he said; that included the efficiency of the motor and the pump and the pipe lines and everything, and the new unit that [697] was in had, by reason of its variable speed, a much higher efficiency so that the plant efficiency altogether, the three pumps in operation, probably, my estimate was they had an efficiency of around 60 per cent efficiency, which isn't so bad for a pumping system.

Q. Well, I'm getting at the cost there. Of course they can hook any number of pumps in tandem there in order to get the water up there, but would it be advisable in view of the probable cost, if you were paying for the electricity?

A. It might; it is purely a matter of dollar economy; shall we continue to operate at this cost, or will we save enough by replacing those with new pumps to warrant the replacement.

Q. To a very large degree, wouldn't you say those pumps should be depreciated for obsolescence?

A. Well, I did depreciate them to a 40 per cent condition.

Q. To what? A. 40 per cent.

Q. Well, actually those pumps had been in operation there for some 39 years?

A. Yes, a long time.

(Testimony of J. C. Stevens.)

Q. And there would be a very severe depreciation on a pump in operation that long, anyway, whether they were obsolete or not?

A. Not necessarily, as the ordinary maintenance would take [698] care of the wear and tear which could be done.

Q. That is not what we're dealing with. We are dealing with the value of the pump for sale purposes. If those pumps that had been in operation there for 39 years was to be offered for sale, wouldn't there be a very sharp depreciation in their value due to depreciation through use?

A. Well, I depreciated them 60 per cent, which I think is a fairly sharp depreciation.

Q. It is a sharp depreciation, but I'm trying to separate obsolescence, now, from depreciation.

A. Well, I don't think there is any depreciation, as such, except obsolescence, over and above what could be repaired by maintenance.

Q. Do you think that those pumps after being used for 39 years there was worth dollar for dollar as much as a new pump would be?

A. Oh, no; I didn't say that.

Q. I know you didn't; you changed it to obsolescence and depreciation both.

A. Well, I don't draw very much distinction between depreciation and obsolescence. It is all there together, over and above what can be taken care of by maintenance.

Q. Well, there could be 100 per cent obsolescence without any depreciation at all, couldn't there?

A. Yes, it could.

(Testimony of J. C. Stevens.)

Q. And there could be 100 per cent depreciation without any obsolescence?

A. Not for those pumps, it couldn't, nor for the motors. You might have a wreck, and wreck them, of course.

Q. Yes, I was just going to ask you, what would you say was the degrees of depreciation on the generator replaced in 1937 up at the plant?

A. That was a breakdown. The whole thing failed, the unit run away, and the generator was all broken up inside of the case; wrecked.

Q. Yes. Now, then, by depreciation, for sale purposes, do we mean the difference in the price that the unit would bring in its used condition as applied to the price that a brand new unit would bring?

A. Well, depreciation of a unit is a matter of physical fact. I don't think it has any special significance, or anything to do with the price, particularly, that one might pay. It might or might not, if I understand your question correctly.

Q. Well, let's go into a distinctly new field. Let's take a building. Let's take a house here in town 40 years of age. It still offers adequate housing, doesn't it?

A. It may.

Q. If properly kept up? [700]

A. My house is about 40 years old.

Q. And it still adequately houses you?

A. Yes.

Q. Nevertheless, it has a very severe sales depreciation over a brand new house, identical with it in design, doesn't it?

(Testimony of J. C. Stevens.)

A. Not today. I could sell that house for three times what it cost.

Q. Yes, but if it were brand new what could you sell it for?

A. Well, I don't know, but houses are clear out of sight now.

Q. Yes, that is right; however, that's getting away from the question that we're attempting to determine. In that case we recognize the fact that the use and the age of the house does depreciate the sales value, don't we?

A. Oh, it generally does, yes.

Q. Yes, and that is equally true with a piece of machinery?

A. Not necessarily, if you keep it up with maintenance and service.

Q. Let's take a machine kept up in perfect condition, and take a brand new machine, and put them on the floor; would you expect to get the same price?

A. Of course not, but it is not a going concern.

Q. I'm trying to get out of the plant; out of use value; [701] I'm trying to settle down to the item of sales value.

Mr. Powell: I object to counsel's question in which he tries to take the machinery out of the plant and set up second hand values. He's talking of salvage values. He took the whole plant, and now he wants to pick it to pieces.

The Court: Let's go ahead with the cross-examination.

(Testimony of J. C. Stevens.)

Cross-Examination

(Continued)

Q. There's a difference in the sales value, isn't there?

A. There's a difference in sales value if you take it out and put it on an auction platform, than leave it in the plant where it is in use.

Q. Oh, yes, we're back to use value, but when we go into a plant and start putting a price on the building itself, or each item of machinery in the plant, our depreciation that we show in the value of the plant and machinery itself isn't entirely dependent upon obsolescence, is it?

A. Obsolescence is just one of the elements of depreciation. Depreciation is the over-all term, and obsolescence is one of the elements that go to make up depreciation.

Q. All right, the over-all term covering what?

A. I'll read you a definition of depreciation, a very short one, and a good one: "Broadly speaking, depreciation is the loss not restored by current maintenance, which is [702] due to all factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay and obsolescence."

Q. The thing I am trying to get at here, Mr. Stevens, is the wear and tear and decay. We have that factor, don't we?

A. "Not restored by current maintenance."

(Testimony of J. C. Stevens.)

Q. Yes, and there is wear and team on machinery that can't be restored by current maintenance, isn't there?

A. Sometimes there is, yes.

Q. All times there is, isn't there?

A. No, not all times. I think ordinary maintenance would keep those pumps, in the absence of a wreck of some kind, keep them going 100 years, if you wanted to use them for that purpose.

Q. All right, if you only used them for 39 years, their life expectancy is the difference between 39 and 100, which is 61 years, isn't it?

A. I did not allow my depreciation on the basis of expected life.

Q. Well, a prospective purchaser would be somewhat concerned with the prospective life of what he's purchasing, wouldn't he?

A. Not of each individual unit. If he's buying the plant, he would do just what I have set up here, condition of [703] the plant as a whole, 40 per cent.

Q. Would a prospective purchaser be willing to pay as much for the plant, after it is kept up, 40 years old, as he would be willing to pay for a brand new plant with all the machinery, generating facilities, and everything else in a brand new condition?

A. I haven't said so; I've shown a depreciation on all that equipment, 60 per cent on the generating plant and equipment, and 40 per cent on the pumping station.

Mr. Powell: The other way around.

A. 60 per cent on the generating equipment, 40 per cent on the pumping plant.

(Testimony of J. C. Stevens.)

Mr. Powell: Depreciation or condition?

A. Condition per cent.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Would you mind looking at your exhibit, Mr. Stevens, on those two pumps Mr. Ramsey's been asking about, you have them in at 30 per cent condition, don't you? That is on page 2, the third item in subdivision 7.

A. Yes, I see I've placed only a 30 per cent condition there, so there is a 70 per cent depreciation on those pumps. I depreciated them more than I did the rest of the equipment at the pumping station.

Q. As far as you per cent condition or your percentage of [704] depreciation is concerned, would there be any difference or would it be affected by the time or date of taking?

A. Do you mean as between May and October?

Q. No, as between 1943, April or October, 1943, and some other year. What was the supply or demand for pumps and motors generally, or electrical equipment?

A. In 1943?

Q. Yes. A. Very heavy.

Q. Could it be supplied?

A. It could not be supplied.

Q. How did people get articles of that kind?

A. Well, they salvaged equipment, repaired it, put it in shape; a lot of second hand equipment was sold. The second hand dealers handling equipment

(Testimony of J. C. Stevens.)

of that kind were able to clean up on much of their equipment that had been held in storage for a long time without buyers.

Q. Was it possible to get a lot of new equipment?
A. No, it wasn't.

Q. Why?

A. Well, the manufacturers were loaded up with war work and other things to such an extent they couldn't supply them.

Q. And was it necessary to have a priority?

A. It was absolutely necessary to get a priority, and you couldn't always get it, either. [705]

Q. If new pumps had been installed in the pump house the pumping station would have been more efficient, wouldn't it?

A. Much more efficient, yes.

Q. And the efficiency would have increased the commercial power for sale, too, wouldn't it?

A. It would.

Q. And is that what you referred to as "dollar economy?"
A. Yes.

Q. Where they would spend the money for new pumps, and save power to sell?

A. That's right.

Q. Now, the example that Mr. Ramsey used, of the house having a certain depreciation, aren't residences generally in the last few years an index of what happens when supply and demand regulates prices?

A. Well, as far as rental property, no.

Q. Pardon?

(Testimony of J. C. Stevens.)

A. As far as rental property, no, because rents have been frozen.

Q. What about the sales?

A. The sale of new houses, of course they were free for sale, not controlled by the government in their control of housing facilities. Prices on those were much higher during that time than they had been prior. [706]

Q. And would the same thing apply to this property, as a general thing?

A. I think so, yes.

Q. That is, how was the date of taking affected in both projects involved here by the general over-all financial condition of the Northwest at that time?

A. Well, that is one reason for these prices that I've set up here. They were higher than have been testified to otherwise, because those prices were in effect in 1943, whatever the cause may have been.

Q. In other words, was 1943 a high or low year?

A. Well, it was on the way to the summit. The peak hadn't been reached yet, but it was above the pre-war prices.

Q. Now, you talked about having used the unit price of 3 mills in capitalizing value, I mean in determining the amount to capitalize. Did you tell us the dump power rate for Bonneville?

A. Well, I said that Bonneville has been selling dump power at 21½ mills in a good many places, I think.

(Testimony of J. C. Stevens.)

Q. And do you know what that rate calls for? That is, under what circumstances does the purchaser get the power at $21\frac{1}{2}$ mills?

A. You mean dump power? It is power that is available when, as and if it is available. It is not guaranteed to be delivered. It can be shut off at any time. When it is [707] available they take it at that price.

Q. And why do you say this is better than dump power?

A. Well, it is firm power; it is available at all times, could be made so available at all times. I don't mean every hour of the year, because there is a certain amount of time that has to be given for this maintenance that I speak of, repairs, and so on. In my calculation I used 90 per cent of the time during which that power could otherwise be delivered.

Q. In other words, even the best power organizations have interruptions of service occasionally?

A. Yes, but of course they overcome that by interconnecting large quantities, large units, or many units, with exchange agreements, by which they may either take or deliver power to the system. Then any plant can shut down for repairs, and they receive their power from the general system without interrupting their service.

Q. And it is metered from one company to another, is that right? A. Yes.

Q. Similar to the way this power is metered?

A. Metered either way—similar to what?

Q. Similar to the way the power is metered in this case.

(Testimony of J. C. Stevens.)

A. Yes, I think so. The power is metered both ways, for power delivered to the Yakima transmission line of the [708] Pacific Power and Light Company, or power may be taken from that line, as I understand the contract.

Q. You have referred to the sale price of a mill and three-quarters for the power at the Priest Rapids plant; were there other benefits too?

A. Well, the other benefits were that they could receive power when they needed it, in emergency, on that same contract and at the same price, if I recall correctly.

Q. And that was a benefit, was it?

A. Oh, yes, certainly it was.

Q. What was the condition of the power market in 1943?

A. Well, it was growing very rapidly, a big demand for power all over the Northwest.

Q. Is it possible, or do you know, Mr. Stevens, if some power is sold and transmitted on a rental basis, over other company lines?

A. Oh, yes, it is done frequently.

Q. Is that done? A. Yes.

Q. On what sort of a basis?

A. Well, I wouldn't be able to say, I don't recall, but it is on a kilowatt hour basis, or perhaps on a yearly rental basis. It all depends on the contract. Many different types and kinds of contracts are written, and I don't know just how that might be written up, but it [709] is done; it is a simple thing to do.

(Testimony of J. C. Stevens.)

Q. Now, you have mentioned in your cross examination that the item of the discharge pipe that you have put in at \$16,000.00, you have depreciated to approximately \$4900.00. Now, could you explain the operations necessary, Mr. Stevens, to arrive at a completed new discharge pipe that would have been installed there, that you have fixed a value on of \$16,000.00.

A. Well, that was a wood stave pipe, six feet in diameter. It consisted of the very best quality of number 1 clear vertical grain staves, cut from, probably milled from 3 by 6 timbers. They had the equivalent of tongue and groove. They had to be held together by steel bands, and the bands that went around them were very likely in two parts, requiring double shoes; the plant includes the excavation, back fill, the erection of the pipe; it had to be erected on the job. The source of this lumber is quite a ways away from this plant, and freight rates would be high, and I think in my statement on cross examination I under-estimated the length of that line. It is nearer 275 feet than 200, so that would be an average price of about \$58.00 instead of \$80.00, as I said before, per lineal foot.

Q. Now, in your item concerning these concrete transitions, I believe counsel raised the question that you had used [710] the same unit price that you did for installing, or for the concrete for the pump house and power plant, which was re-enforced concrete, and in which you included the cost of the re-enforcing material and the windows and doors and things like that.

(Testimony of J. C. Stevens.)

A. Well, this price, this transition, would include the trimming of the slope down to a nicety to place the concrete on, and I assume that forms were used in the canal, the concrete was quite a ways from the source of its supply, equipment had to be brought in to place it, and it is a relatively small quantity, so that the price for a small quantity, from the rather isolated distances for cement and gravel, would be what otherwise would be required for a very large quantity, so I feel that the price of \$50.00 per cubic yard, placed in relatively thin slabs along the canal, that included all these other elements, is a fair price, not exorbitant at all.

Q. Do you have a copy of the Exhibit 15, Mr. Stevens? A. Yes.

Q. Counsel has referred to your reproduction cost in the first column, in his cross examination; he did not make reference particularly to your depreciation column. I will ask you again, then, if the depreciation column, which is entitled "R". Cost Less Depreciation"—

A. That is reproduction cost less depreciation.

Q. —reproduction cost less depreciation, have you actually computed the percentage to arrive at the column 3?

A. Yes, the quantities in the last column, and the reproduction cost less depreciation, are obtained by multiplying those in the column headed "Reproduction Cost" by the condition per cent shown in the column between the two.

(Testimony of J. C. Stevens.)

Q. And you've actually depreciated the items, ranging from 30 per cent on the two pumps up to 99 per cent on the spillway—no, on the——

A. Well, there's some items there is no depreciation; the excavations, for example, and the power canal, 100 per cent, no depreciation.

Q. 90 per cent on some of the equipment?

A. 90 per cent on the new units.

Q. That is 90 per cent condition, not depreciation?

A. 90 per cent condition on the new.

The Court: I don't believe this is proper redirect examination. The exhibit speaks for itself, doesn't it? Is there any difficulty in understanding what that column is?

Mr. Powell: No, your Honor. I'm sorry! Counsel examined him in detail on it, and I don't intend to pursue it.

Q. Now, could you explain again the matter of the confusion [712] that apparently existed in Mr. Ramsey's mind about this Allis Chalmers governor, and the Woodward governor?

A. I think we were talking about different governors. I was under the impression he was referring to the Woodward governor on number 2 unit. That unit was in in 1943. In fact, I am informed it was put in about 1941, I think there's testimony here, and there is also a Woodward governor on number 1, that is the old Allis Chalmers unit, that replaced the Allis Chalmers governor; that was in there since 1941, too, and was there in 1943, and it is the Allis

(Testimony of J. C. Stevens.)

Chalmers governor that I have included in my tabulation, not the Woodward governor.

Q. The Allis Chalmers governor on unit 1?

A. That's right.

Q. You did not see the Allis Chalmers governor on unit 1 when you were there in 1946?

A. No, it was not there. I had to take the tabulation from Mr. Hall's or Mr. Tinling's that that was an Allis Chalmers governor, and then I inquired of the operator there, too.

Mr. Powell: That's all, your Honor.

Recross-Examination

By Mr. Ramsey:

Q. Well, now, I'm not sure I am straight on this governor yet. The item which appears under your generating equipment, number 4, Allis Chalmers turbine driven vertical [713] coupled water wheel and governor, is that the item?

A. Yes, coupled to an Allis Chalmers Francis type triple wheeled turbine, including an Allis Chalmers governor with tanks, pumps, and so forth.

Q. On which you put \$5800.00 as replacement cost?

A. No, on which I placed \$75,000.00 for that unit number 1, which includes the governor, the old Allis Chalmers governor that was there, and the next unit, number 2, includes the Woodward governor; both of those were there in 1943.

Q. Now, getting back to the benefits, aside from the $1\frac{3}{4}$ mills per kilowatt hour that the Priest Rap-

(Testimony of J. C. Stevens.)

ids Irrigation District had under this contract with the P. P. & L. Company, isn't it a fact that under that contract the District was required to pay 4 mills for all electricity that was metered back to them from the P. P. & L. line?

A. I don't know.

Q. Have you read the contract?

A. I think I read part of it, and I don't recall what their back payment price was.

Q. Well, if that is a provision of the contract, would you consider that was any particular benefit to the District? A. Yes.

Mr. Powell: To that I object as not the best evidence, your Honor. [714]

Mr. Ramsey: I'm just testing his knowledge.

The Court: He can answer if he knows.

A. I stated I thought the price probably was about the same price at which they could sell, but I am stating now that if they could buy back for substitution during breakdowns at 4 mills, that was a very fair price for them.

Mr. Ramsey: I think that's all.

The Court: Any further questions?

Mr. Powell: That's all, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

R. S. REIERSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is R. S. Reiersen?

A. That's right.

Q. Where do you live, Mr. Reiersen?

A. In Yakima.

Q. How long have you lived in Yakima?

A. Since October 1, 1943.

Q. Where did you live before you moved to Yakima?

A. In White Bluffs.

Q. What did you do there?

A. I operated a general store.

Q. Did you have a farm also? [715]

A. And I had a farm, and I was a member of the Board of Directors of the Irrigation District.

Q. Since then have you been acting as secretary?

A. Been acting as secretary since 1944, I believe.

Q. Have you made a tabulation from the District records so that you can determine the acreage of privately owned lands within the District?

A. I have.

Q. Will you give us the acreage of lands, Mr. Reiersen?

A. Of the privately owned land?

Q. Yes.

The Court: As of what date?

Q. I think this date, if your Honor please, will be about December, 1942, or January, 1943, which is the last assessment roll; is that correct, Mr. Reiersen?

(Testimony of R. S. Reiersen)

A. It will be taken from the assessment roll prepared for 1943.

Q. Prepared for 1943? A. Yes.

Q. And when was that?

A. In December, I think, or November or December, of '42.

Mr. Ramsey: No objection, your Honor. I think that is as close as we can possibly get.

The Court: Oh, yes, I just wanted to fix it. The year hadn't been stated, or anything. [716]

A. The privately owned lands totalled 3552.13 acres.

Mr. Ramsey: I didn't get that, Mr. Reiersen.

A. 3552.13 acres. The State of Washington had 2194.83 acres.

Q. And 83/100? A. Yes, sir.

Mr. Ramsey: Again, may I have that?

A. 2194.83. The District had 10,165.27, and the United States government had one tract consisting of 38.16.

Q. That was before they filed this action?

A. Before the action was filed, this was on the assessment roll. There were 164.39 acres outside of the District boundaries.

Q. Could you give us the total, first, of the acreage?

A. The total of the acreage in the District boundaries, 15,950.39.

Q. What was there outside of the District?

A. 164.39 acres.

Q. And who owned that?

(Testimony of R. S. Reiersen)

A. That belonged to the Irrigation District, apparently, because we were paid for it, outside the boundaries, and not on the tax roll.

Q. Was it included in this particular action?

A. Presumably, yes.

Q. I have reference, Mr. Reiersen, to the action we're trying [717] now. Is this property around the power house?

A. At the power house? I have not included the property at the power house.

Q. I see. This is property outside of the property at the power house?

A. This is the land that we received compensation for.

Mr. Powell: Now, if your Honor please, this witness will be asked to testify concerning the amount paid by the government for all the property within the Priest Rapids Irrigation District boundaries. This question has a bearing on the legal question in the case, and the government's position, so I presume that offer might be made in the absence of the jury.

The Court: Yes, I think we may as well excuse the jury until Monday morning at 10 o'clock. We'll adjourn at 4 anyway, and there is not much time left. This is rather a long adjournment period, so please remember what I said about not discussing the case with anyone or allowing them to discuss it in your presence. We'll resume the trial Monday morning at 10 o'clock. You may be excused.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: The Court may be a little presumptuous [718] in sending the jury out. Mr. Ramsey hasn't objected. He might not object.

Mr. Ramsey: I think the Court may assume that Mr. Ramsey will object.

Mr. Powell: If your Honor please, the government's position in this case, number 128-99, is based in part on the government's contention that the value of the District's property was fully reflected in the amounts paid by the government for the lands within the Priest Rapids Irrigation District. The so-called Schwellenbach formula, to the extent it operates against the District's interests, is based on an assumption that the value of the irrigation properties of the District was fully reflected in the amount paid by the government for the land within the District. Defendant District offers evidence of the amount the government paid for the lands within the district. That total amount is less than \$650,000.00. The District submits that the bare fact of the amount, less than \$650,000.00, refutes the contention or assumption that the value of the District's properties was fully reflected in the awards to the private land-owners in these cases. This point, we realize, may depend on the value of the District's properties, but we believe it is clear, or at least will be by the end of this trial, that the District [719] property alone had a value far in excess of that amount.

Mr. Ramsey: May I inquire of counsel in his compilation as to the sums paid by the government for the properties within the District, whether included in those sums are the sums paid for those tracts within the boundaries of the District and paying bond and interest charges, irrigated from their own wells?

Mr. Powell: My understanding is that this witness and Mr. Salvini have within the last week made a compilation and spent most of their time on it, and that the figure they have does include all the property in the District, whether irrigated from wells or the system.

Mr. Ramsey: Does it also include the property in the towns of White Bluffs and Hanford?

Mr. Powell: They were not within the District, and paid no assessments.

Mr. Ramsey: I am quite sure that the certificates of title show that a great many of the lots in the townsites do have charges made against them for water.

Mr. Powell: I think you refer to the old town of White Bluffs, which was, and which had a very bad title, incidentally, but there were two or three townsites there, I don't believe—am I wrong, Mr. Reiersen?

Mr. Reiersen: The White Bluffs city I believe was excluded. [720]

Mr. Ramsey: May I point out that in the townsite of Hanford, as well as in Richland, that there were numerous agricultural tracts, being utilized as agricultural tracts, under irrigation, some in

orchard, some in mint, some in other production, and they were having water delivered by the District.

Mr. Cheadle: If this may, your Honor, become a three-cornered discussion by counsel?

The Court: Yes.

Mr. Cheadle: If the lands in Richland or the lands in White Bluffs or Hanford were outside of the District boundaries, and were not subjected to assessments by the District for the furnishing of water to lands within the District, they might still be furnished with water for domestic or irrigation purposes by the District, but they would not be lands within the District.

Mr. Ramsey: Granted, counsel.

Mr. Cheadle: The point I want to make, your Honor, is this; the mere fact that, let us say, residential properties in the town of Sunnyside, if that has been excluded from the District, may be furnished domestic water by the District does not make those lands members in the District, and the same situation may obtain here. The question is, are the lands in those [721] towns legally within the legal boundaries of the District? I confess I do not know the answer.

Mr. Ramsey: That is the very question I raise, and I grant all that counsel has said. I am raising the question as to whether those lands are not within the District.

Mr. Powell: My understanding is that the compilation includes all the real property within the District when the government took the property on February 23, 1943.

Mr. Ramsey: I presume the witness is in the best position to answer the questions.

Mr. Powell: I am depending on his answers.

Mr. Reiersen: We have taken this from the assessment rolls, and it includes all the land, with the exception of lots in the old town of White Bluffs, which were in dispute, or in question, as to whether they were within the borders of the District or not, and the title report showed that they should be cancelled wherever they were.

Mr. Powell: That was because, was it not, Mr. Reiersen, that there was a question as to the exclusion order, and subsequent to the entry of an order excluding the old town of White Bluffs, the District did assess erroneously? [722]

Mr. Reiersen: Pardon?

Mr. Powell: The District did assess the property after the exclusion order was entered?

Mr. Reiersen: Yes, but my understanding was that it was ruled that they should not be included, and I think we signed disclaimers to them.

Mr. Ramsey: With reference to the townsite of Hanford, was the entire townsite of Hanford excluded from the District?

Mr. Reiersen: As far as the townsite is concerned, there is no distinction whatever there on the assessment roll. There were one or two places in the edge of town that are on there. They get their water, and were listed on the tax roll.

Mr. Ramsey: Well, aside from what may be shown by such compilation, I submit to the Court that this is not a question that can have any bearing

whatever upon the legal questions involved here. There is no obligation upon the government to pay for irrigation district facilities any spread that may be represented between the cost, not the value, but the cost of those facilities, and the amount paid for the land, any more than there would be any obligation upon the landowners to accept from the government only a sum that would be equivalent to the cost of their facilities. The two things do not bear the slightest relationship toward each other. As I have argued to this Court before, we might have an irrigation district which cost five million dollars to irrigate 10,000 acres. It would be so ridiculously high per acre, and impose such a charge per acre upon that land, that land would be practically valueless, because no one would want to buy it and stand the charge against it, and to say that the value of that land, or the value of the facilities, either one, that the value of the land should represent the full cost of the project, would be just as silly as to say that the project was worth what it cost, on the other hand.

The Court: As I understand it, however, here, it is obvious that cost and value are two different things; a castle built in the desert might cost a hundred thousand dollars and be valueless, but as I understand it, what they propose to do here is put in evidence the total amount you have paid for the lands in the District, and show that that is a great deal less than the actual value, the market value, of the facilities of the District.

Mr. Ramsey: So what do they propose to prove by that?

The Court: Well, it is their proof.

Mr. Ramsey: I just don't understand the purpose of the offer. May I say again—— [724]

The Court: I think the purpose of the offer, as Mr. Powell stated, as I understand it, is to show that there hasn't been adequate compensation to the land owners for the value of the irrigation works of the system in paying them for their irrigated lands. Is that the purpose of it? Have I stated it correctly?

Mr. Cheadle: Yes, your Honor, and if I may make this further point, counsel now states at this bar that there is no relation at all between what was paid for the lands within the District, and the valuation of the District properties involved in this case, and yet, your Honor, it has been stated in brief of the government and it has been stated in arguments before this Court by this same counsel that very substantial sums were paid by the government, both in purchase contracts and condemnation awards, for these farms down here, and that that compensation fully reflected the value of the District properties, and your Honor, if this is not admitted in evidence there is nothing to keep the government on appeal from making the same contentions in written brief and in oral argument, and I submit that as a mere matter of fairness, we're not putting this to the jury, we're not asking that it go to the jury, but I submit that as a mere matter of fairness we should be permitted to have in the record what the government actually paid, and I also submit, your Honor,

that the government's own position here is that it succeeded, if it has a successful theory, that through its purchase of some lands and its condemnation of others, and even in the condemnation, they say they succeeded to the interest of the land owners, and they say they acquired everything the owners had, and they rely on the Horse Heaven case, which we say is inapplicable, and yet, your Honor, if it is shown by this proposed evidence, and shown by what the jury here determines to be the value of the District's assets, that in fact the government paid to the land owners less than the amount of the value of the District properties, I think it is obvious those values were not reflected, and may I suggest that it should be borne in mind that with regard to the condemnations of those individual properties, where the government says the District property values were fully reflected, no evidence was permitted to go to the jury as to the value of the District properties, and we submit that evidence as to that has direct bearing on the legal contention of the government, and for that purpose it is admissible in the record of this case.

The Court: I don't see how I could admit this in evidence in this case and not submit it to the jury. We've got only one record, and that is the evidence admitted in this case in which we have a jury to determine [726] the facts, so I would have to admit it and send it to the jury, or exclude it, I think. However, of course, if you make your offer specific enough as to the amount that the government has paid as a whole, it would be in here so

that if an appellate court held I had ruled erroneously on it, it would be in the record.

Mr. Powell: May we then now examine this witness, on that basis, in the absence of the jury, which would be our offer of proof, and then detail the evidence again at the jury's return if the court admits it?

The Court: I think the only purpose of examining the witness would be to lay your foundation for your offer, and then you can state in the offer what you propose to do.

Mr. Powell: The only thing is, I don't have all the figures. The witness has them, and he has compiled them. I'll be glad to do it.

Mr. Ramsey: And I would submit to the Court that this not the proper way to prove this; it is not the best evidence for some layman to fan through a thousand tracts of land involved in this proceeding and come in and say "I find from looking through those the government paid so much money." That is not the best evidence as to what was actually paid by the government on those tracts. [727]

The Court: Well, of course, you're not in a position to say whether you question the total amount or not.

Mr. Ramsey: I am questioning the method of proof of the total amount.

The Court: It is a matter of record here. They could bring in the files of the clerk and introduce them. That would be rather cumbersome.

Mr. Powell: I might suggest, if your Honor please, that most of these payments were made

through Mr. Ramsey's office. Nobody is in a better position than Mr. Ramsey to bring them in to the Court.

Mr. Ramsey: That is quite correct, and if I could recess this case for about a week, I might be in a position to get it.

Mr. Powell: Well, it's taken us about a week.

The Court: I don't want to keep you from making your offer, of course. It is the view of the Court that it isn't properly admissible in this case, and I will sustain the objection, but first we must have the offer of proof here. I have no objection to your making it by examining the witness.

Mr. Powell: Well, I assume it would be more convenient to your Honor and counsel if we would prepare it in writing and submit copies. [728]

The Court: Yes, perhaps; it is near the end of the day here.

Mr. Ramsey: Well, why can't you include as a part of your offer the statement that you offer to prove by the records in the case that the total sum paid by the government——

Mr. Powell: No, if your Honor please, it isn't all in the case. We've gone to the county auditor's office and taken into consideration the amount in the deeds.

The Court: I see; it is a matter of record, but this isn't all, the case here, is it?

Mr. Ramsey: Yes, your Honor, because in those cases where direct purchase was resorted to, motions and orders of dismissal were entered in 128.

Mr. Powell: Counsel has forgotten, if your Honor please, in those purchases and deeds, there were no declarations of taking filed on those properties.

Mr. Ramsey: That is correct, but you will still find in the clerk's office in every instance where property was acquired by the government in direct purchase, that a motion and order of dismissal was entered, and a copy of the deed attached to the original motion for dismissal of the tract out of the case.

The Court: Do the deeds show the true consideration?

Mr. Ramsey: Yes.

Mr. Cheadle: Without requesting that the Court reconsider its ruling, I would like to mention this one point. If the irrigation district cannot present this evidence in this case, I do not know where or in what way they can present it to a court and combat the contention of the government, which is based in part, your Honor, not entirely, they have their legal contention that they are fully entitled regardless, but they have also contended, and they included it in their objection to the offers of proof in those early October, 1943, proceedings, that the value of the District properties would be fully reflected in the compensation paid to the individual land owners, and your Honor, I don't know how else we can get it before the Court, and it is a fact on which the government, without revealing the fact, bases its argument in part, and a large part.

Mr. Ramsey: Let me clarify the situation. The contention of the government has been and it has

been reiterated and unquestionably will be again, that the value of those district facilities as irrigation facilities necessarily are reflected in the value of the land. Now, that doesn't mean the value that counsel might want to ascribe to its facilities separated from their duty [730] to the land, because after all, irrigation facilities and properties have no value except as they are applied to the irrigation of the land, and as I pointed out to the Court before, you might get the same identical benefits from the investment of fifty thousand or five million dollars. The true value of irrigation facilities is reflected only in the benefits that accrue to the land served thereby, and the government's contention and position is predicated upon the fact that the irrigation facilities are as valuable as the benefits that they confer on the lands which they serve, and if those lands are purchased and paid for as irrigated lands, with all of those benefits accruing, then the full value of the irrigation facilities for the purpose for which they were designed have been compensated.

Now, I think that makes the government's position clear on that particular thing. The statement was not intended to apply to the original cost of the facilities, or to the reproduction cost less depreciation approach, or to the value that might be ascribed to them if they were lifted out of that location and put elsewhere, or devoted to another purpose, but it does apply to the actual value of the facilities to the lands which they serve, as irrigation facilities.

The Court: It seems to me you haven't any uniform [731] standard of value that you can supply

anyway, aside from what Mr. Ramsey has said. Value is a question of opinion, in the final analysis, and what one jury may determine as value does not mean that is the actual value. If you submit to two different juries the question of value of the same land you get different answers. I think if there is a discrepancy, though, it might have some probative value. I don't think it is proper in this case, however, I do want you to make as full an offer as you feel you should, and it would be best, I think, to give you more time to prepare and present it when the trial is resumed next week.

Mr. Powell: May I ask if Mr. Stevens and Mr. Tinling may be excused from further attendance in the case? If you would rather not say, counsel, we will ask them to come back.

Mr. Ramsey: I certainly don't want to put you under the obligation of compensating expert witnesses for extra days, because if they come as high as the government's witnesses it may run into considerable money. I wouldn't object to that.

The Court: Very well, they may be excused, then. Is there anything else tonight?

(Whereupon, the court took a recess in this cause until Monday, February 17, 1947, at 10 o'clock a.m.) [732]

Yakima, Washington, February 17, 1947
10 o'clock a.m.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Now that we have had the weekend to rest, at least from this case, I hope we will move along a little more expeditiously, shall we say. I hope it doesn't run into the next case. Do you have your offer of proof ready now, Mr. Powell?

Mr. Powell: Yes, we have, your Honor. Shall we read it into the record?

The Court: I suppose you may as well. Mr. Ramsey, you have a copy?

Mr. Powell: Or we can give a copy to the reporter.

The Court: If you wish you can give a copy to the reporter, and Mr. Ramsey can make his objection. Is that acceptable to you, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

Offer of Proof of the Priest Rapids Irrigation District

The defendant Priest Rapids Irrigation District offers [734] to prove by the witness R. S. Reiersen that he and B. Salvini, the chairman of the Board of Directors of said District, have made a thorough and careful examination and comparison of the assessment rolls of the district with the records of the office of the County Auditor of Benton County, Washington, and with the files in Civil No. 128 in the office of the Clerk of this Court. That the purpose of said investigation and comparison was to determine the total amount that the United States

of America, Petitioner, has paid for all of the lands within the Priest Rapids Irrigation District. That the Government in this condemnation proceeding has contended that there is no obligation on the part of the United States of America to pay compensation for the district's properties for the reason that the value thereof was reflected in the amount paid for the privately owned lands. That paradoxically in the condemnation trials regarding said privately owned lands the Government successfully objected to offer of proof of the value of the district's properties for the same reason in part. That said investigation was just completed on February 14, 1947, in order to include settlement amounts of as many tracts as possible, and that where no settlement has been completed the amount included has been the amount deposited in Court by the United States as estimated [735] just compensation. That the amounts paid for the land to private land owners included all of the improvements on the property, as well as any crops growing thereon. That said investigation discloses that for the lands within the district payments or deposits have been made as follows:

Privately owned lands receiving water from the district and privately owned lands not irrigated	\$449,899.30
Privately owned lands within the district irrigated by private pumping from owner's wells	124,265.00
State owned lands	7,435.00
District owned lands.....	49,361.50
<hr/>	
Total all lands	\$630,960.80

That in compiling the above figures where lands and tracts were both within and without the district, the entire amount has been included, thus showing a greater amount paid than was actually paid for lands within the district. That in a large number of settlements and of awards the greater part of the value was for crops as the time of taking was contemporaneous with the time of harvest.

That the proof here offered is relevant and material to the issue of whether the district [736] should be awarded just compensation in this trial for all of the district's properties; and that, if the compilation be inadmissible under the best evidence rule, then defendant district offers the same proof from the many files of the Court in Civil No. 128 which, Government Counsel has stated in open court, record the price paid for each tract of land in the district.

* * *

Mr. Ramsey: If the Court please, the offer of proof on behalf of the defendant District is objected to. first, upon the grounds that the testimony by which the defendant District offers to establish the sum paid by the government in this proceeding and by direct purchase for the lands within the District is not the best evidence of the facts; that the records in this proceeding, that is, civil number 128, United States vs. Alberts, is the best evidence of the ultimate facts sought to be established, in that in the records of the case as to each of the individual tracts under condemnation, and in the records in that case of dismissal of tracts under motion of the government, and supported by a certified copy of

the deed to all tracts acquired by direct purchase, may be determined, and it is submitted that those matters cannot be put in evidence by the testimony of lay witnesses who claim to have [737] gone through the records of the case and the records of the Auditor of Benton County.

The further objection is made that the value of the facilities of the District cannot be in any way established by the proof of the sum paid by the government in this proceeding for the privately owned lands and the lands owned by the District, the county, and the state within the boundaries of the District; that the value of the facilities for the use for which they were intended can only be determined by the additional value that is given to the lands within the boundaries of the district through their utilization for the purpose for which they were intended, and that cost price, or the difference between the alleged cost price of those facilities and the sum paid for those lands in no way reflects nor can it in any way reflect the value of the facilities themselves.

Mr. Cheadle: I merely want to make one brief statement, your Honor, in addition to argument we presented Friday, regarding the best evidence rule. Our written offer of proof this morning contains the offer that if, in the event——

The Court: I was just about to cover that by my ruling.

Mr. Cheadle: I beg your pardon. Our [738] offer was to prove by the records of the Court if the first offer is inadmissible under the best evidence rule.

The second and only point I wish to address myself to in regard to the objection made by Mr. Ramsey this morning is that according to his statement what we offer to prove has no bearing on the value of the District's properties. The offer is not made for that purpose, but it is intended as not relating to what is before the jury, but as being relevant and material to the legal issue before your Honor as to whether the District is entitled to compensation for all of its properties. I think aside from those points we will merely rely on the argument presented Friday.

The Court: Yes. The offer will be denied, the objection to it sustained, the defendants allowed an exception. The ruling is on the substance of the offer, and not on its form as not being the best evidence. The court without requiring the defendant to bring the documents actually here to show by the best evidence this offered proof, will assume that would be done, and will not require it; and I will say that since the ruling of the Court is on substance rather than form, it will be unavailing for them to bring the documents here. Is that sufficient to show that the offer is denied on the matter of substance, and not on the matter of the best [739] evidence?

Mr. Powell: May I ask that the reporter will copy the offer in as being in open court?

The Court: Yes, I think it is understood that the offer will be copied into the record, the same as if it was read in the record.

Mr. Cheadle: On the first day of proceedings before the jury, when I believe the witness Salvini was on the stand, at the time when Mr. Powell asked

the first question which bore directly on value, government counsel made objection, the objection, as I recall, was overruled, and that was the first time in the proceedings before the jury at which there was occasion for objection to be made and the court's ruling, all involving the decisions which your Honor announced informally in chambers. At that time we requested that we be permitted at that point to file an exception which we would prepare in writing to the so-called Schwellenbach formula ruling. We have prepared that. It was typed only yesterday, but a copy has been handed to government counsel this morning, and with your Honor's permission, which I believe was given at the time, we will hand a copy to the reporter. Is that agreeable, Mr. Ramsey?

The Court: Yes, the exception may be made in that way, by handing a copy to the reporter, unless there is objection. [740]

Mr. Ramsey: No objection.

Mr. Cheadle: Our understanding is that it would be typed into the transcript at that point, at which point we stood on that day and requested the permission.

The Court: Well, if the reporter hasn't that point definitely marked——

Mr. Cheadle: I requested him at the close of that day's session, your Honor, to mark the point, and I believe your Honor did so also.

The Court: Well, if you have any difficulty working out the mechanics of getting it in the right place we can bring that up later. You may bring in the jury.

Mr. Powell: Does your Honor want to make a ruling on our offer of proof in the presence of the jury?

The Court: I don't think it would be necessary; no, I don't think so.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

R. S. REIERSON

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued.)

By Mr. Powell:

Q. Mr. Reiersen, you had been asked concerning the division of ownerships of the real property in the District, had you not? On Friday, when we concluded, you had just [741] given your testimony as to the ownerships of the property in the irrigation district? A. That's right.

Mr. Powell: You may cross examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Reiersen, you stated that at the time the government took over the District in this proceeding that the District itself owned approximately 10.165.27 acres of land?

A. Yes, more or less.

(Testimony of R. S. Reiersen.)

Q. Well, now, as a matter of fact, Mr. Reiersen, isn't it a fact that at that time all of the district acreage was under option to the Priest Rapids Development Company?

Mr. Powell: Objected to as immaterial, if your Honor please.

The Court: Overrule the objection.

Mr. Powell: Not the best evidence.

Mr. Ramsey: This is cross-examination.

The Court: Well, he can answer if he knows.

A. The Priest Rapids Development Company had an option to sell land for the district.

Q. And under that option the District provided what sums should be paid to the District for each of these tracts of land, leaving it to the Priest Rapids Development Company to sell for whatever they could? [742]

Mr. Powell: If your Honor please, I don't think that is proper cross-examination. That is just the matter that we offered proof on.

Mr. Ramsey: Well, I submit to the Court that the witness has testified the District owned this land at the time the government took it over. The nature of this option is material for the purpose of establishing that.

The Court: I will overrule the objection.

(Whereupon, the reporter read the last previous question.)

(Testimony of R. S. Reiersen.)

Cross-Examination

(Continued.)

Q. Isn't that true, Mr. Reiersen?

A. That is correct, with the also addition that in case sales were made in excess of \$15.00 per acre, the sum above that amount was to be divided between the District and the real estate agency.

Q. Yes, and as a matter of fact, in the acquisition of these lands the government paid the Priest Rapids Development Company for the lands, and the Priest Rapids Development Company compensated the District, under the terms of that option, isn't that true?

A. As a selling agent for the District, yes.

Mr. Powell: Objected to as not the best evidence.

The Court: Overruled.

Q. The District received the balance due from the Priest [743] Rapids Development Company under the option?

A. That's right.

Q. Now, you say that this was optioned to the Priest Rapids Development Company as the sales agent for the District, but as a matter of fact, the option provided that on the payment of certain sums to the District by the Priest Rapids Development Company the District would convey the lands to the Priest Rapids Development Company, isn't that true?

A. As a selling agent, yes; they were agents for the owner.

(Testimony of R. S. Reiersen.)

Q. I understand that, Mr. Reiersen. I am getting now to the nature and form and contents of your option. In other words, your option did not provide that if the Priest Rapids Development Company brought in a purchaser to the District at or above a certain sum, the District would sell the property to the purchaser brought in, and pay a commission, did it?

A. I don't believe I understand your question.

Mr. Powell: I would like to renew my objection, your Honor, not proper cross-examination, and not the best evidence.

The Court: I'll overrule the objection, if he knows about it.

(Whereupon, the reporter read the last previous question.) [744]

A. I don't believe the terms of the contract, as I stated previously, that we had—the real estate company had an option to sell that land for us, and we could not sell it direct.

Q. Well, did not your option provide this; that for a certain fixed sum to be paid by the Priest Rapids Development Company to the District, the District would sell and convey to the Priest Rapids Development Company the lands described: wasn't that the form of your option. A. Yes.

Q. In other words, it wasn't the ordinary broker's contract that you had with them, it was an out and out option to the Priest Rapids Development Company?

(Testimony of R. S. Reiersen.)

A. My understanding was that they acted as agents for selling our land.

Q. Yes, I understand that, but I'm talking now about the form of your contract with them. you did not have the usual broker's contract with them at all, did you?

A. No, I don't believe it was a regular broker's contract, no.

Q. Your option ran directly from the District to the Priest Rapids Development Company?

Mr. Powell: Is it understood this all goes in over our objection, your Honor?

The Court: Yes, that will be understood.

Q. Did it not? [745]

A. The deed would be made to the Priest Rapids Development Company, or to the purchaser, in either event, when they paid up.

Q. And the Priest Rapids Development Company, by paying the sums stipulated under the option, could have called upon the District for a deed to all of that land, couldn't they?

A. Provided the District Board of Directors had approved of the sale. It had to be approved by the Board.

Q. Well, the Board of Directors did approve the contract, didn't they? A. Yes.

Q. And the contract provided that, didn't it, that upon the payment of stipulated sums a deed would pass from the District to the Priest Rapids Development Company?

(Testimony of R. S. Reiersen.)

A. In this case the government was buying the land, and the Priest Rapids Development Company exercised their option in order to convey title to the government, and that is the price on which our payment was based.

Q. Your option with the Priest Rapids Development Company was drawn a long time before the government ever came into this picture, wasn't it?

A. I believe two years prior—in '39.

Q. And the Priest Rapids Development Company, under the terms of that option, had been selling land out there during [746] that whole two years, hadn't they, to settlers?

A. 1939 and '40, until '42, the last year very few sales were made, because neither Mr. Miller nor Mr. Adams, the partners who acted——

Q. Well, isn't it a fact that when the government went in there, that there was a block of about 600 acres that the Priest Rapids Development Company had marketed to a group of Mormon settlers, and that only the intervention of the government taking over this property prevented it passing to these Mormon settlers?

Mr. Powell: We object further on the ground that this point, matter of this kind, carries over beyond the date of taking, and would not be material, because counsel's question is predicated upon the fact there would be something for the future, something to be done after the taking, and would therefore change the taking from what it was at the time the taking took place.

(Testimony of R. S. Reiersen.)

Mr. Ramsey: I'm asking about the condition at the time the government went in.

The Court: I will overrule the objection.

A. The Priest Rapids Development Company from the time they first came in there sold possibly in the neighborhood of five or six hundred acres to settlers that they had brought in there, and during the last year, in '42, there were very few sales made, but prior to that these [747] sales had been made.

Q. Well, I'm asking now about the status of the situation with reference to the sale of a considerable acreage, some five or six hundred acres, that was impending when the government took over the project.

A. In addition to——

Q. What had already been sold.

A. Not that I know of. I'm not familiar with—I had a record of all the contracts that they had made up to the time that the government took possession of the area.

Mr. Ramsey: Now, if the Court please, unless Mr. Reiersen will be available at the time that the government puts on its case, I ask leave at this time to make this my own witness.

Mr. Powell: He'll be available.

Mr. Ramsey: If he will be available, I don't want to call him now.

The Court: I think it is best to put it in in order if the witness is available.

Mr. Ramsey: Yes, on Counsel's assurance that the witness will be available.

(Testimony of R. S. Reiersen.)

The Court: I might say that the best evidence rule would be invoked on direct; if it depends upon option or contract you had better have it, if it is available. Do you have something further? [748]

Mr. Powell: Yes, I do, your Honor.

Redirect Examination

By Mr. Powell:

Q. This contract between the Priest Rapids Development Company and the Priest Rapids Irrigation District was for what purpose, Mr. Reiersen?

A. To sell agricultural land for the irrigation district.

Q. Was it for colonization?

A. Colonization, yes.

Q. You wanted more people in the District?

A. To bring in more people into the District.

Q. Was it made for the purpose of selling the land to the government?

Mr. Ramsey: Well, I suggest that counsel is very much leading the witness, there.

The Court: Well, it is leading. Go ahead.

A. No.

Q. Well, what did you want from this contract?

A. It was a colonization program, to bring in more people in the valley, and at the same time they were setting up a program for further development of the irrigation facilities of the District.

Q. Now, do you remember when this action was started, Mr. Reiersen? A. In 1939.

Q. No, this action, this condemnation [749] action you're testifying in today.

(Testimony of R. S. Reiersen.)

A. Oh, the first notice of the government possession was received on March 6, 1943. That is the first notice of the individual owners of the area. On April 17, 1943, I received a receipt from the Army Engineers that they had taken possession of the pumping plant at Coyote. On July 30 the Army Engineers took possession of the transmission line between Coyote and Priest Rapids, with the exception of one small area of that line, section of that line, and on October 1, 1943, we received notice that the government was taking possession of the power plant.

Q. Did the District want to sell the properties the government is taking in this case?

Mr. Ramsey: Oh, objected to, if the Court please.

Mr. Powell: Well, I think counsel will concede they didn't want to. I want to be sure he doesn't argue that they tried to get them to take it.

Mr. Ramsey: I don't think counsel has ever heard government counsel argue that way.

(Whereupon, the reporter read the last previous question.)

The Court: That is immaterial. I'll sustain the objection.

Redirect Examination

(Continued.)

Q. Mr. Reiersen, you're now secretary of the Priest Rapids Irrigation District? [750]

A. I am.

(Testimony of R. S. Reiersen.)

Q. And you have all the records of the Priest Rapids Irrigation District?

A. All the records that we had in the files.

Q. Some of the records cannot now be found?

A. For a considerable length of time our office was at White Bluffs, Washington, and the Army Engineers took possession, went in and moved stuff around there without our consent.

Mr. Ramsey: If the Court please, this is objected to as incompetent, unless it is merely preliminary.

Mr. Powell: Well, it is preliminary.

The Court: It should be applied to something that pertains to this law suit. We don't care about it unless it pertains to this law suit.

Redirect Examination

(Continued.)

Q. Do you have a copy of the Marc Miller option in your files?

A. The original option or contract on these lands?

Q. No, the original contract between the Priest Rapids Development Company and the Priest Rapids Irrigation District.

A. We have the original contract, drawn in 1939.

Q. Was there an option on other lands? Isn't that the [751] contract you've been talking about, Mr. Reiersen?

A. Yes.

Q. Where is it?

A. In the file.

Mr. Ramsey: I was just going to ask if this witness had that contract available and with him.

(Testimony of R. S. Reiersen.)

A. 1939 is in the file; the renewal in 1943 should be in the file.

Q. Well, is it?

A. I haven't been able to locate it.

Q. When did you last see it?

A. Sometime in May or June, I think, of 1943.

Q. And where was that?

A. In the Irrigation District office.

Q. And who had keys to the office?

A. The secretary, Joe Grell, and Marc Miller.

Q. Who is the Priest Rapids Development Company?

A. The owners, or the officers, of that company, was Marc Miller and J. G. Adams; they were the two partners.

Q. Is that C. Marc Miller, the initial "C"?

A. C. Marc Miller.

Q. His name is Marc? A. Yes.

Q. How do you spell his name?

A. C. M-a-r-c M-i-l-l-e-r. [752]

Q. Now, do you know by whom he was employed when this project started in 1943?

Mr. Ramsey: That is objected to as incompetent, irrelevant and immaterial.

The Court: I don't see the materiality of this; Mr. Powell, how Marc Miller spells his name, and all that. What's that got to do with the law suit?

Mr. Powell: I think except it would tend to identify Mr. Miller as being an employee of the War Department.

The Court: What difference does that make?

(Testimony of R. S. Reiersen.)

Mr. Powell: It makes this difference; counsel will argue these lands were sold and entitled to water.

The Court: Yes.

Mr. Powell: And therefore when the government took them over they were entitled to water; also under that option contract we propose to offer some exhibits in evidence to show that Mr. Miller had a different understanding of the contract than counsel is leading the Court and jury to believe, and that water was not available for these lands.

Mr. Ramsey: I will submit to the Court that counsel is not attempting to lead the Court or jury to believe anything. I assure counsel that the government will secure that contract if it is available, and put Mr. [753] Miller on the stand.

The Court: I think the time for that would be on rebuttal, if it is necessary.

Mr. Powell: I thought this line of cross examination was not proper cross examination; it is part of counsel's case in chief, and not part of ours.

Mr. Ramsey: I submit to the Court the witness testified the District owned these lands at the time of taking.

The Court: And the fact that it was optioned to someone else would at least have a bearing on the question of ownership. That is the only reason it was allowed at this time. I don't know what the government is going to attempt to prove, at this time.

(Testimony of R. S. Reiersen.)

Redirect Examination

(Continued.)

Q. As a matter of practice, Mr. Reiersen, did the district have any jurisdiction over the sales of lands with water?

Mr. Ramsey: Objected to as attempting—is that on the contract, Mr. Powell?

Mr. Powell: Yes.

Mr. Ramsey: That is objected to as attempting to vary the terms of the written contract.

The Court: Well, I'll overrule the objection. I permitted you to go into it orally.

A. I would like to have that question stated.

(Whereupon, the reporter read the last previous question.)

Mr. Ramsey: Further objected to as not being predicated upon a legal right, but merely what may have been done.

The Court: Well, I'll overrule the objection.

Mr. Ramsey: Exception.

The Court: See what it leads to.

A. The Board of Directors passed upon the land that was sold.

Q. And in what way?

A. Well, they approved the sale, if they thought it was desirable for farming land. If a man wanted to invest in it, and he knew that water couldn't be put on it, and he wanted to buy it under the circumstances, well, that was his privilege.

Mr. Powell: That's all.

(Testimony of R. S. Reiersen.)

The Court: Any further questions?

Mr. Ramsey: Oh, I don't think so, that's all.

Mr. Powell: I will ask leave to recall him for a few questions, if I may.

(Whereupon, there being no further questions, the witness was excused.)

B. SALVINI

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

By Mr. Powell: [755]

Q. Mr. Salvini, do you know whether or not there were any R. E. A. lines in Benton County in 1943, that is, Rural Electrification Association, or whatever it is?

Mr. Ramsey: Objected to as incompetent, irrelevant, and immaterial.

The Court: Well, I presume it is preliminary. I'll overrule the objection and see where it's leading.

A. There was.

Q. And where?

A. The headquarters was at Prosser.

Q. Pardon?

A. The headquarters was at Prosser, but the Rural Electric they had a line coming down towards Richland, and it was crossing down at the Horn, but oh, I judge it is probably 20 miles straight south of our line.

(Testimony of B. Salvini.)

Q. 20 miles straight south of your line. Where was your line, where was the Coyote Junction station located from the railroad station or siding of Allard?

Mr. Ramsey: If the Court please, before we go any further into this matter I believe at least the Court and counsel are entitled to know where we're headed.

Mr. Powell: Counsel made a point all through this case that the only market was the Pacific Power and Light Company. I want to show that there was another market in 1943. I think that is material, counsel. [756]

The Court: Well, all right, go ahead.

A. The Allard railroad station was just about a mile east of our junction at Coyote.

Q. It was on the Milwaukee tracks?

A. It was just about a mile west of the Milwaukee tracks, at Coyote Junction.

Q. Well, the Allard station was on the tracks, wasn't it?

A. The Allard station was on the track, but I thought you asked me about our——

Q. Coyote Junction? A. Coyote Junction.

Q. That was a mile west of the Allard station, is that right? A. Yes.

Q. Now, Mr. Salvini, the Horn that you refer to is the point in the Yakima River that is the farthest north in Benton County?

A. Well, we call the Horn the point where the Yakima River between Benton City and Richland

(Testimony of B. Salvini.)

makes that big curve, just before it gets to the Kennewick and Richland dam.

Q. I see. Now, there has been some discussion, Mr. Salvini, about the governor on the number 1 generator. Do you know when that governor was overhauled?

A. The governor to the number 1 generator was overhauled in 1941. The winter of 1940 and '41, I think it is, when we put in the new generator, and we rebuilt that number 1 [757] governor and put in a new Woodward governor on the other generator.

Q. What kind of a governor was the old one?

A. The old one, I think they called it Allis Chalmers. I don't know if it is or not, but I think that's what——

Q. I see; now, what work, if any, had the District done in taking care of the pole line, that is, the transmission line.

A. Well, the transmission line, we been doing work right along, all the time. We did the first around 1934, 1935, we got a carload of treated stumps, I mean stubs, and we started at that time, and every time that there was something needed, well, we go along and replace them, and along '37, '38, and '39, during the W.P.A., whenever the W.P.A. didn't was busy in the summer in agricultural work, we kept them busy all winter to re-stub those poles or replace them, whenever they was out of repair, so the line we kept in number one all the time. We put in probably 90 or 95 poles, new ones, since 1937.

(Testimony of B. Salvini.)

Q. Yes. Do you know how many stubs?

A. No, I don't know the number, because there was a lot of stubs. Whenever we run out of those treated, why, we used to get a pole and saw him up and make a stub, so I don't just the number.

Q. What condition was the line in, or the poles in, in the [758] spring of 1943?

A. They was in good condition.

Q. And about the construction of this line along the hillside, Mr. Salvini, was there anything peculiar about the construction of this pole line along the hillside?

A. Well, the hillside was practically all in solid rock. It was up on the top of the hills where some mile or so up there was kind of hard to get at, to those poles, but being that they're down in solid rock, well, usually they didn't give much trouble.

Q. Well, how were those poles put in, if you know?

A. Well, I don't know; those poles was put in up there by the previous company.

Q. Well, are they right on the rock cliff?

A. Some of it, they are.

Q. Do you know how much water was pumped at Coyote Pumping Station?

A. I know we had the ditch clear full, and they claimed we just had a reading up there, that whenever the gate's under four foot it was time to not put any more in the ditch, but we kept it full all the time, from 96 to up around 100, and that reading, I don't know if it means feet or inches or what it was.

(Testimony of B. Salvini.)

Q. Where was that reading?

A. Well, it was up at the head of the pipe line that emptied [759] out into the canal.

Q. I see. How much water did you deliver per acre per year?

A. Well, we used to deliver 96 acre inches.

Q. Was that more than was needed?

A. Well, yes, it is, but we had the water, and it won't cost us any more to have the ditch full than to not, so as long as we have it, well, we didn't have any more new facilities for taking in the new ones, so we just give plenty of water.

Q. You gave everybody all the water they wanted?

A. Well, I suppose they were, because some of the fellows they didn't change it for two or three days, so they must have got all they want.

Mr. Powell: That's all.

Cross-Examination

By Mr. Ramsey:

Q. How old was this power line, Mr. Salvini?

A. Huh?

Q. How old is this power line?

A. This power line, I don't know when it was built. I was told it was around 1910 or 1912 or '13; I don't know just what year.

Q. Well, was that put in by the old Hanford Power and Irrigation Company to run from the power plant down to the pumping station?

A. That's what I was told. [760]

Q. And at that time the line, what you call the

(Testimony of B. Salvini.)

stub line in the station, was a part of the original line, wasn't it?

A. I suppose they were; I don't know.

Q. Well, that so-called stub line is a 66,000 volt line too, isn't it? A. Yes.

Q. And the only thing is, the P. P. & L. tied on to the line at what is now known as Coyote Junction; that's the only change that's been made to the line since it was originally built, isn't it, that the P. P. & L. tied on to it at what is now known as Coyote Junction? A. Yes.

Q. Now, the power plant up there was built about 1907, I believe it says on the building?

A. I think so.

Q. And the transmission line was built to carry the power generated there down to the pumping plant? A. I suppose they were.

Q. Was the pumping plant at Coyote there pumping to capacity during the season?

A. She was pumping full capacity?

Q. I say, was the pumping plant pumping to capacity during the season?

A. Well, not if we had a bigger canal. [761]

Q. Not if you had a bigger canal?

A. If we had a bigger canal we could pump more water.

Q. If the pump was pumping to capacity that's all the water it could pump, wasn't it?

A. Well, I was told by people that used to take care of the repairs up there that they could pump more water if we had a place to put it; the pumps were bigger than the canal would carry.

(Testimony of B. Salvini.)

Q. You mean the canal wouldn't carry the water that was pumped by the pump, is that right?

A. Yeh.

Q. About what part or per cent of the water that was pumped into that canal do you figure was delivered on to the land, Mr. Salvini?

A. Well, I didn't know just the amount that was delivered. We was told, we had several engineers up there to check it through the season, we wanted to know just how much we was losing through evaporation or seepage, but even at that we had lots of water, the laterals that we took over from the company, they was full all the time.

Q. Well, you say even at that; you by-passed my question.

A. I didn't know just the amount that we was losing.

Q. Well, now as a matter of fact, you estimated you were losing at least 50 per cent of the water that was pumped into that ditch, before it got to the land? [762]

A. Well, I don't think it was quite 50 per cent that they told us.

Q. You don't think it was quite 50 per cent?

A. No.

Mr. Ramsey: I think that's all.

The Court: Any further questions?

Mr. Powell: No.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Ramsey: May I ask if this witness also will be available when the government puts on its case?

Mr. Powell: Mr. Salvini?

Mr. Ramsey: Yes.

Mr. Powell: Yes, I'll ask him especially to stay. Mr. Salvini, we just want you to stay here in the courtroom. That's what you wanted?

Mr. Ramsey: Yes, I don't want to make him my witness now.

BARRY DIBBLE

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. State your name, please.

A. Barry Dibble.

Q. B-a-r-r-y D-i-b-b-l-e?

A. That's correct [763]

Q. Where do you live, Mr. Dibble?

A. Redlands, California.

Q. Could you speak a little louder, please, Mr. Dibble? What is your business, sir?

A. I am a consulting engineer.

Q. Do you have any degrees in engineering?

A. Yes, I graduated from the University of Minnesota with a degree of Electrical Engineer.

Q. And when was that? A. In 1903.

Q. Did you ever attend any college or university here in the State of Washington?

(Testimony of Barry Dibble.)

A. Yes, I attended the College at Pullman, which was then called the Washington Agricultural College.

Q. Are you a member of any society of engineers?

A. I am a member of the American Institute of Electrical Engineers, and of the American Society of Civil Engineers, and of the American Association of Engineers; also a member of the American Society of Agricultural Engineers.

Q. When did you first have any connection with a power plant, Mr. Dibble?

A. In 1899, while I was going to school at Pullman, I worked in the power plant at the college, which supplied part of the town of Pullman and the college.

Q. And after you left the University of Minnesota in 1903 [764] what work did you follow?

A. The first work done was supervising the construction of the power plant at the Louisiana Purchase Exposition at St. Louis; then I went to Cincinnati and was employed on the electrical construction of a steam power plant for the Columbus and Cincinnati Traction Company. From there I went to Michigan and was employed on a traction company between Jackson and Battle Creek, then to Shawinigan Falls in the Province of Quebec, in Canada, where I was an operator in the hydro-electric plant there.

Q. How long were you there?

A. About a year. From there I went back to my home in St. Paul and was employed by the St. Paul

(Testimony of Barry Dibble.)

Gaslight Company, which had both the gas and electric system in St. Paul at that time, then I went to Minneapolis and was with the Twin City Rapid Transit Company for three years on hydro-electric steam plant and substation design and construction. Then I entered the United States Reclamation Service, as it was then called, in 1909.

Q. When?

A. In the year 1909, and was assigned to the office of the Chief Electrical Engineer in Los Angeles. That office was engaged in the design of numerous hydro-electric plants and some steam, pumping plants, and transmission lines. From there I was sent to the Minadoka project in [765] Idaho, where for five years I was superintendent of the power and pumping system there. The power plant consisted of a five unit plant, each unit having a capacity of 2000 horsepower, 1400 kilowatts, approximately. In that capacity I handled the sale of power to the municipalities and to farmers' organizations which were organized and took power at central points and from substations and from the power plant and distributed it to their members. They were mutual companies. It was an idea developed there in that project, before the time of the R. E. A. At the end of five years I was made manager of the project, in charge also of the irrigation system of about 121,000 acres, and of storage and delivery of stored water to the Minadoka project, and also to the other projects on the Snake River in Idaho.

(Testimony of Barry Dibble.)

Q. What is the principal town, or are the principal towns, in the Minadoka project?

A. The principal towns are Rupert and Burley.

Q. In your work there with the Minadoka project did you have any obligation to determine or allocate the cost of the power plant to irrigation and commercial power? A. Yes.

Q. Was there an irrigation district there?

A. There were two irrigation districts.

Q. Who owned the power plant? [766]

A. Well, the title, of course, was in the United States, and there were different interests, the irrigation districts had different interests. It was allocated to them in connection with their construction charges.

Q. I see, and that is the basis, or rather, there was a division, or was there a division of the power value of the power plant property between irrigation and commercial power? A. Yes.

Q. Did you have any connection with it?

A. Yes.

Q. What connection?

A. Well, I worked it out.

Q. And you worked out the division that should be made? A. Yes.

Q. In this particular project you refer to, Mr. Dibble, did the irrigation district——

A. May I correct, there? I did not work out the division between the two districts, but my work consisted of allocating the cost of operating the power system between the irrigation and commercial sales.

(Testimony of Barry Dibble.)

Q. And who handled the commercial sales of power from the Minidoka project?

A. That was my, one of my jobs there.

Q. And you were then in the employ of the Reclamation Bureau? [767] A. Yes.

Q. Were there any pumps used in connection with that project?

A. Yes, there were several pumping plants of different capacity.

Q. And in your duties there at the Minidoka project did you have to develop markets for your power?

A. Yes, I went there before any power was sold at all, and there were three yearly contracts that had been made, and preparation was being made for the sale; beyond that I developed the business up until the time I left.

Q. And did you sell any of that power to private companies? A. Yes.

Q. Now, when did you leave the Minidoka project? A. I left in 1923.

Q. By the way, how many acres are there in this project?

A. About 121,000 in the project as it was at that time. It has since been increased somewhat.

Q. Where did you go when you left that project?

A. I was made chief electrical and mechanical engineer of the Bureau of Reclamation, with headquarters in Denver, Colorado.

Q. How long were you there?

A. About a year and a half.

(Testimony of Barry Dibble.)

Q. As such chief electrical and mechanical engineer for the [768] Bureau did you have any connection with power plant properties?

A. Yes, with all the power plant properties of the Bureau of Reclamation, both the design, preliminary work, and the design and construction and supervision of the operation and maintenance.

Q. And what connection, if any, did that work have to do with the division of the cost or value of power plant property between irrigation and power values?

A. Well, I don't recall in that position that the matter came up at all.

Q. It was principally design and construction?

A. Yes.

Q. At that time did you have any connection with Boulder or Grand Coulee?

A. Yes, at that time the Bureau of Reclamation was making its first studies of both those projects, and I participated in the design and preparation of reports on both of them. That also included studies of the market possibilities for the power that was expected to be generated. There were several, I might add that there were several smaller projects that the marketing of power was a feature on also, that came up at that time.

Q. During '23 and '24 when you were in Denver?

A. Yes.

Q. When you left the Bureau where did you go?

A. I went to California to open an office as consulting engineer.

Q. At Redlands, California?

(Testimony of Barry Dibble.)

A. Redlands; I've been there ever since.

Q. Have you had any connection with power plants and power plant properties and irrigation since that time?

A. That has been my work all the time.

Q. Did you ever work for any foreign country, Mr. Dibble?

A. Yes, I was in Mexico for a year, with some very brief intermissions, working for the National Irrigation Commission of Mexico. That was principally in the years 1928 and '29.

Q. Are you a consulting engineer for any agencies now handling and marketing power, or operating power properties?

A. Yes. I am consulting engineer for the United States Indian Service, Office of Indian Affairs, I presume it should be called. There are two projects in Arizona in which power marketing and generation is involved, one the San Carlos project, which is around the town of Coolidge, about half way between Phoenix and Tucson; the other the Colorado River project, near the town of Parker, Arizona. Another project in which the same activity is involved is the Flathead Project, in Montana, where the project has a [770] small hydro-electric plant, and also buys power from the Kerr Dam of the Montana Power Company, under the terms of a license from the Federal Power Commission to the Montana Power Company.

The Court: The court will recess now for ten minutes.

(Short recess.)

(Testimony of Barry Dibble.)

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Dibble, you stated that you had been consulting engineer with the United States Indian Service? A. Yes.

Q. In that same connection, did you have any work on the Wapato Project? A. Yes.

Q. How long have you been consulting engineer and had connection with the Wapato Project?

A. Since about 1927, I think.

Q. Do they have any power plants?

A. Two hydro-electric plants, and one direct pumping plant.

Q. How do the plants on the Wapato Project compare with the Priest Rapids plant?

A. They're quite similar in size.

Q. What about the pumping plant? [771]

A. It is a little larger than the pumping plant on the Priest Rapids project.

Q. That is, the Wapato plant is larger than the Priest Rapids plant?

A. It has a capacity of 120 second feet, compared with about 90 or 100 second feet on the Priest Rapids plant.

Q. How do the power plants compare in size?

A. One of them has a rated capacity of 2400 kilowatts, the other one has a capacity of about 1800, as I remember it, I'm not sure, 1600 or 1800.

(Testimony of Barry Dibble.)

Q. They're approximately the same size as the Priest Rapids plant, or similar in size to the Priest Rapids plant?

A. The Priest Rapids plant falls between them, in capacity, in rated capacity.

Q. Are the Wapato plants operated the year 'round? A. No.

Q. When are they operated?

A. They're operated in the summer time. There are drops in the main canal, and they use the irrigation water to produce power.

Q. The water is taken from where?

A. From the Yakima River.

Q. Just below the gap? A. Yes.

Q. Now, in the three projects you mentioned, the San Carlos, [772] the Flathead, and the Colorado River plants, did you work on or was there any report made by you of the division in values between irrigation and power?

A. Not at Wapato; there was on the San Carlos and the Flathead projects.

Q. Have you been doing any work in connection with the marketing of power, Mr. Dibble, other than that you have mentioned in connection with these projects?

A. Well, my work in Mexico involved the marketing, or at least the study of marketing of power from the dams that were in contemplation there. I've done some work for the Bureau of Reclamation in that connection, and for the Metropolitan Water District of Los Angeles, Southern

(Testimony of Barry Dibble.)

California, and for irrigation districts in Texas and New Mexico, and one project in Idaho known as the Clear Lakes project, and I presume others.

Q. Do you do work for the War Department?

A. Yes.

Q. In what connection?

A. Well, I now have a consulting contract with the Seattle District Office in connection with studies on the Columbia River on an extension of what is called the 308 work. I have a contract with the Kansas City District involving studies on the Osage River, where both flood control and power and navigation are included, and under that contract [773] I am also doing some work for the Garrison District at Bismarck, North Dakota, on the Garrison Dam on the Missouri River.

Q. When you were asked concerning your employment in this case, Mr. Dibble, did you get a clearance from the District Office?

A. I did, from the Seattle Army Engineers' Office.

Q. You advised them the Irrigation District had requested your services in this case? A. Yes.

Q. Have you ever been a witness in actions similar to this?

A. Well, each one is different, but they have been condemnation cases.

Q. You have been a witness in condemnation cases? A. Yes.

Q. Now, about this 308 report, what connection, if any, did you have with that, Mr. Dibble?

(Testimony of Barry Dibble.)

A. The original 308 report, I was consulting engineer in Portland to the Division and District offices and to the Seattle District also. That work was done in 1930, most of it.

Q. What particular work did you do?

A. I made my particular work the power developments and the power markets.

Q. Power development and power markets?

A. Studies, yes.

Q. Have you had any connection with the fixing of any rates or determination of rates for the sale of power?

A. Yes.

Q. Where?

A. Well, I worked out the rates for the Minadoka project in Idaho, I worked out the rates for these Indian projects and for other projects, and did some work in connection with the Bonneville Administration.

Q. When was that?

A. The Bonneville work was in 1939.

Q. And who was operating the Bonneville Administration at that time?

A. At the time I went there Mr. Frank Banks was the administrator, was taking that over, and before I left Dr. Raver had been appointed.

Q. And when you were there were you with the Reclamation Bureau?

A. No.

Q. What agency was operating the Bonneville?

A. The Bonneville Power Administration was operating the system, as it is now. Mr. Banks was assigned there temporarily to fill in the vacancy that had been created by the death of Mr. Ross.

(Testimony of Barry Dibble.)

Q. And you were assigned there temporarily under Mr. Banks? [775]

A. Yes, I was the assistant administrator.

Q. What work did you do there in connection with the determination of power rates?

A. Well, the major part of the work that came within my field was the power contracts and negotiations, the handling of rates matters, and such things, along with the transmission work and so forth.

Q. Were the transmission lines as they now exist built at that time?

A. Not all of them, no. In fact, most of them were not.

Q. What about the line from Coulee to Bonneville?

A. That was under construction, had not been completed; in fact, hadn't passed much beyond the survey stage.

Q. How long were you there with the Bonneville Administration?

A. About four months.

Q. About four months? A. Yes.

Q. During that time were any particular rates established and later approved?

A. Yes, we worked out the revision of the rate schedules to make them more flexible and adaptable, and under the Bonneville Act any rates that are established must be approved by the Federal Power Commission. I went to Washington to talk them

(Testimony of Barry Dibble.)

over with the Federal Power [776] Commission, and they were finally approved.

Q. There has been some discussion about the Bonneville Dump Power rate, Mr. Dibble. Did you have any connection with the establishment of that rate?

A. Yes, I designed the rate.

Q. And what is that rate?

A. It is a rate of $2\frac{1}{2}$ mills a kilowatt hour for surplus, dump power, with the condition that the power is withdrawable at any time, and that the operating purchaser must have a sufficient capacity so that he can carry his load if the power is withdrawn.

Q. Have you had any connection with the sale of any power sites or power properties?

A. Yes. After I left the Bureau of Reclamation I promoted a company, finally sold a power site near Buhl, Idaho.

Q. Now, what was the name of that?

A. That was the Farmers' Mutual Power Company.

Q. Sold to whom?

A. Well, that is the company that was to organize the—it was organized to handle—the site was sold to the Idaho Power Company.

Q. The site was sold to the Idaho Power Company, is that right?

A. I did not conduct the negotiations with the Idaho Power Company when the sale was finally made there; the Farmers' [777] Mutual Company had an option on the site.

(Testimony of Barry Dibble.)

Q. And have you testified in any condemnation cases involving power properties, Mr. Dibble?

A. Yes.

Q. Have you testified in the State of Oklahoma?

A. Yes.

Q. In what case?

A. I am not sure of the title of the case. It involved the Pensacola dam site, on the Grand River. The case was brought by the Grand River Dam Authority against the owners of the site.

Q. And have you testified in any cases in the State of Washington?

A. Yes, I have testified in several cases in connection with Grand Coulee Dam and reservoir, involving the Grand Coulee dam site originally, and later a suit against the Big Bend Transit Company for the condemnation of The Narrows site, on the Spokane River. I also prepared to testify in the case involving the Kettle Falls site and another site farther up the river, I forget the name of it.

Q. The Kettle Falls case was not actually tried, was it?

A. Well, no testimony was taken.

Q. No testimony was taken in the case?

A. No.

Mr. Powell: Now, I pass from that, if your Honor [778] please. If counsel wants to examine the witness as to his qualifications, he can do it now.

The Court: Well, why not examine him in the regular way? That's part of the cross-examination, his qualifications.